



A BILL FOR AN ORDINANCE

RELATING TO CIVIL FINES FOR VIOLATIONS OF THE ETHICS LAWS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and purpose.

The purpose of this ordinance is to implement the amendments to Sections 11-106 and 11-107, Revised Charter of Honolulu, ratified by the voters in the 2006 general election that authorize the ethics commission to impose civil fines on elected city officers for violations of the standards of conduct.

Article XI of the revised Charter requires, and the public relies upon, elected officials to conform their conduct to the highest ethical standards. In addition, the mayor, the councilmembers and the prosecuting attorney have broad discretionary authority over vital public issues. As a result, a breach of the standards of conduct by an elected officer may cause financial harm to the city and its citizens or may undermine the public's trust in government.

Authorizing the ethics commission to impose civil fines against elected officers is intended to deter unethical conduct in public officials. It should also encourage officials to seek advice from the ethics commission before they act. Consequently, unethical conduct should be reduced, thereby fostering the public's faith in elected city officers.

Procedural safeguards ensure fair treatment for those accused of a violation that may result in a civil fine. First, no fine may be imposed without examining the aggravating and mitigating circumstances surrounding the violation. Second, the rights of an elected official who is accused of an ethics law violation will be protected by following the procedures described in the Hawaii Administrative Procedures Act, Chapter 91, Hawaii Revised Statutes. Third, state law mandates the creation of an ethics appeals board to which a fined official may appeal.

SECTION 2. Section 3-6.3, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"Sec. 3-6.3 Powers, duties and functions.

- (a) The commission shall render advisory opinions at any time at the request of an officer or employee of the city involving the possible conflict of interest or unethical conduct on the part of or the solicitation, acceptance, or receipt of a gift by such officer or employee.



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- (b) The commission shall also render advisory opinions in circumstances where there is alleged to be a conflict of interest or unethical conduct on the part of any employee or officer of the city within the scope of the revised charter and Article 8 of this chapter.
- (c) The commission shall have jurisdiction for purposes of investigation and taking appropriate action over a complaint or request for an advisory opinion alleging a violation of the standards of conduct established in Article XI of the revised charter or of Article 8 of this chapter by a current or former officer or employee that has been submitted to the ethics commission within six years after the alleged violation occurred. Any investigation commenced by the commission on its own initiative into an alleged violation of Article XI of the revised charter or of Article 8 of this chapter by a current or former officer or employee shall be commenced within six years after the alleged violation occurred.
- (d) The commission shall recommend to the appointing authority or the council, in the case of a councilmember, appropriate disciplinary action against officers and employees found to have violated the standards of conduct established in Article XI of the revised charter or Article 8 of this chapter.
- (e) The commission may impose civil fines as set forth in Section 3-8.5.
- (f) The commission may submit to the mayor and council recommendations and reports which it deems advisable and which pertain to the standards of conduct contained in Article XI of the revised charter, to the administration of said Article XI or to any other matter relating to the fostering and maintenance of ethical conduct.
- [(d)](g) The commission may initiate or make investigations and hold hearings.
- [(e)](h) The commission may subpoena witnesses, administer oaths and take testimony relating to matters before the commission and issue subpoenas for the production for examination of any books, papers or other documents relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized herein with respect to any investigation or hearings it shall be by formal resolution, supported by a vote of the majority of the members of the commission, defining the nature and scope of its inquiry.
- [(f)](i) The commission may, from time to time adopt, amend and repeal such rules and regulations, not inconsistent with the provisions herein and of Article 8 of this chapter, as in the judgment of the commission seem appropriate for the carrying



CITY COUNCIL

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out of the provisions herein and of Article 8 of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules and regulations, when approved, promulgated and filed as provided in HRS Chapter 91 shall have the force and effect of law.

~~[(g)]~~(i) Any commission member or commission staff, who divulges information concerning the allegation prior to the issuance of an advisory opinion by the commission, or if the investigation discloses that the advisory opinion should not be issued by the commission, any commission member or commission staff who, at any time, divulges any information concerning the original allegation, or divulges the contents of disclosures except as permitted by this article, shall, if found guilty, be subject to the applicable provisions of Section 11-106 of the revised charter.

~~[(h)]~~(k) The commission may disclose the name of any officer or employee who has been determined by the commission, following investigation and a hearing or opportunity for a hearing, to have violated any of the provisions of Article 8 of this chapter or of Article XI of the revised charter in accordance with HRS Chapter 92F.

~~[(i)]~~(l) The commission may submit information or records to another agency, an agency of the State of Hawaii, an agency of another state, or to an agency of the federal government, or a foreign law enforcement agency or authority as permitted under HRS Chapter 92F.”

SECTION 3. Section 3-8.5, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

“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.



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- (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] Article XI 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.
- (d) In addition to any other penalty, sanction or remedy provided by law, the ethics commission may impose a civil fine against a former or current elected officer of the city who has been found by the ethics commission to have violated the standards of conduct in Article XI of the revised charter or this article. For the purposes of this section, "elected officer" means a member of the council, the mayor and the prosecuting attorney.
- (1) Where a civil fine has not otherwise been established in this article, the amount of the civil fine imposed by the ethics commission for each violation shall not exceed the greater of \$5,000 or three times the amount of the financial benefit sought or resulting from each violation.
- (2) In determining whether to impose a civil fine and the amount of the civil fine, the ethics commission shall consider the totality of the circumstances, including, but not limited to:
- (A) The nature and seriousness of the violation;
- (B) The duration of the violation;
- (C) The effort taken by the elected officer to correct the violation;
- (D) The presence or absence of any intention to conceal, deceive or mislead;
- (E) Whether the violation was negligent or intentional;



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- (F) Whether the elected officer demonstrated good faith by consulting the ethics commission staff or another government agency or an attorney;
 - (G) Whether the elected officer had prior notice that his or her conduct was prohibited;
 - (H) The amount, if any, of the financial or other loss to the city as a result of the violation;
 - (I) The value of anything received or sought in the violation;
 - (J) The costs incurred in enforcement, including reasonable investigative costs and attorneys' fees;
 - (K) Whether the elected officer was truthful and cooperative in the investigation; and
 - (L) Any other relevant circumstance.
- (3) No civil fine shall be imposed unless the requirements of Chapter 91 and HRS Section 46-1.5(24), have been met.
 - (4) The ethics commission may recover any civil fines imposed pursuant to this section and may, through the corporation counsel, institute proceedings to recover any civil fines.
 - (5) Pursuant to Chapter 1, Article 19, the ethics commission shall have executive authority to add unpaid fines by administrative order to any taxes, fees or charges.
 - (6) Notwithstanding Section 3-6.3(c), no civil fine may be imposed under this subsection:
 - (A) If the applicable complaint or request for advisory opinion is submitted more than four years after the alleged violation occurred;
or
 - (B) For an investigation commenced by the commission on its own initiative, if the investigation is commenced more than four years after the alleged violation occurred."



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SECTION 4. Section 3-8.4, Revised Ordinances of Honolulu, as amended (“Financial disclosures”), is amended by amending subsection (f) to read as follows:

“(f) Penalty.

(1) Officers and Employees.

(A) Late Filing. Any officer or employee of the city whose required financial disclosure is not received by the ethics commission or the city clerk, whichever is applicable, by the close of business on the deadline date specified in subsection (b), shall be given a notice of violation of the provisions of this section by the ethics commission or the city clerk, whichever is applicable. The notice shall state that the city officer or employee has 10 days from receipt of the notice in which to file the required financial disclosure or be subject to the penalties provided in this paragraph and Section 3-8.5. Any city elected officer [or employee], who has received this notice and fails to file the required disclosure within 10 days of receipt of the notice, shall be subject to a civil fine according to the following schedule: \$100.00 for the first late filing; \$200.00 for the second late filing; and thereafter, for each additional late filing, the fine imposed for the previous late filing plus \$200.00. [The] Any penalty or fine shall be imposed after an opportunity for a hearing conducted by the ethics commission under HRS Chapter 91.

(B) Failure to File. Any officer or employee of the city who fails to file a financial disclosure as required in this section within 30 days from receipt of the notice of violation referred to in paragraph (A), shall, in addition to any civil fines imposed under paragraph (A), be subject to:

- (i) The provisions of Section 3-8.5 relating to noncompliance; or
- (ii) A criminal penalty of a fine of not more than \$2,000.00 or of imprisonment for not more than one year, or of both such fine and imprisonment,

or to both (i) and (ii).



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(2) Candidates.

(A) Late Filing. Any candidate whose required financial disclosure is not received by the city clerk by the close of business on the deadline date specified in subsection (b), shall be given a notice of violation of the provisions of this section by the city clerk. The notice shall state that the candidate has 10 days from receipt of the notice in which to file the required financial disclosures or be subject to the penalties provided in this paragraph. Any candidate, who has received this notice and fails to file the required disclosure within 10 days of receipt of the notice, shall, upon election to office, be subject to the provisions of Section 3-8.5 and a civil fine according to the following schedule: \$100.00 for the first late filing; \$200.00 for the second late filing; and thereafter, for each additional late filing, the fine imposed for the previous late filing plus \$200.00. [The] Any penalty or fine shall be imposed after an opportunity for a hearing conducted by the ethics commission under HRS Chapter 91.

(B) Failure to File. Any candidate who fails to file a financial disclosure as required in this section within 30 days from receipt of the notice of violation referred to in paragraph (A), shall, in addition to any civil fines imposed under paragraph (A), be subject to a criminal penalty of a fine of not more than \$2,000.00 or of imprisonment for not more than one year, or of both such fine and imprisonment.

(3) Rules.

The ethics commission shall have the authority to establish rules to implement subdivisions (1) and (2)."

SECTION 5. Chapter 3, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new article to be appropriately designated by the revisor of ordinances and to read as follows:

"Article __. Ethics Board of Appeals

Sec. 3-__1 Establishment of ethics board of appeals.

There shall be an ethics board of appeals that shall consist of five members. The ethics board of appeals shall be governed by the provisions of Section 13-103 of the Charter and the applicable provisions of HRS Chapter 91.



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Sec. 3-__2 Restrictions on conduct.

- (a) Except for exercising the right to vote or making a campaign contribution to a candidate for elective public office, no member of the ethics board of appeals shall support, advocate or aid in, or manage, the election or defeat of any candidate for public office. No member of the ethics board of appeals shall be a candidate for any elective public office nor engage in campaigning for such office.
- (b) Any member of the ethics board of appeals who violates the provisions of this section shall be removed by the mayor forthwith, since such person serves at the pleasure of the mayor.

Sec. 3-__3 Appeals to the board.

Any person aggrieved by a civil fine imposed by the ethics commission may appeal the civil fine to the ethics board of appeals within 30 days of the mailing or service of the decision by the ethics commission."

SECTION 6. In Sections 2, 3, and 4 of this ordinance, ordinance material to be repealed is bracketed and new material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material or the underscoring.



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SECTION 7. This ordinance shall take effect 30 days after its approval.

INTRODUCED BY:

Barbara Marshall

DATE OF INTRODUCTION:

July 20, 2007
Honolulu, Hawaii

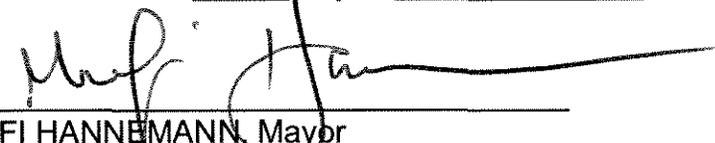
Councilmembers

APPROVED AS TO FORM AND LEGALITY:



Deputy Corporation Counsel

APPROVED this 29th day of October, 2007.



MUFU HANNEMANN, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE

07 - 43

BILL 60 (2007), CD1

Introduced: 07/20/07 By: BARBARA MARSHALL

Committee: EXECUTIVE MATTERS

Title: A BILL FOR AN ORDINANCE RELATING TO CIVIL FINES FOR VIOLATIONS OF THE ETHICS LAWS.

Links: [BILL 60 \(2007\)](#)
[BILL 60\(2007\), CD1](#)
[CR-312](#)

COUNCIL	08/15/07	BILL PASSED FIRST READING AND REFERRED TO THE COMMITTEE ON EXECUTIVE MATTERS.				
	APO Y	CACHOLA E	DELA CRUZ Y	DJOU E	GARCIA Y	
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y		
EXECUTIVE MATTERS	09/05/07	CR-312 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING AS AMENDED IN CD1 FORM.				
PUBLISH	09/08/07	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.				
COUNCIL/PUBLIC HEARING	09/19/07	CR-312 ADOPTED, BILL PASSED SECOND READING AS AMENDED (BILL 60 (2007), CD1), PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON EXECUTIVE MATTERS.				
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y	
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y		
PUBLISH	09/24/07	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.				
EXECUTIVE MATTERS	09/26/07	CR-354 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.				
COUNCIL	10/17/07	CR-354 ADOPTED AND BILL 60 (2007), CD1 PASSED THIRD READING.				
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y	
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


DENISE C. DE COSTA, CITY CLERK


BARBARA MARSHALL, CHAIR AND PRESIDING OFFICER