REVISED CHARTER OF THE CITY & COUNTY OF HONOLULU 1973 (2000 EDITION) UPDATED WITH 2000-2015 CHARTER AMENDMENTS

Kirk Caldwell,
Mayor

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PREAMBLE

We, the people of the City and County of Honolulu, accepting responsibility to seek to achieve in our time that righteousness by which the life of our land is preserved and to encourage and enable our people to participate in their governance, do hereby adopt this Charter of the City and County of Honolulu.

ARTICLE I -
INCORPORATION, LIMITS AND STRUCTURE OF GOVERNMENT

Section 1-101. Incorporation –

The people of the City and County of Honolulu shall be and continue as a body politic and corporate by the name of "City and County of Honolulu," hereinafter in this charter called "city." By that name it shall have perpetual succession.

Section 1-102. Geographical Limits –

The island of Oahu and all other islands in the State of Hawaii, not included in any other county and waters adjacent thereto, shall constitute the City and County of Honolulu.

Section 1-103. Structure of Government –

The government provided by this charter shall consist of two coordinate branches to be known as the "Legislative Branch" and the "Executive Branch."

Note

Under the separation of powers provided in the Honolulu charter, the legislative branch of the city and county government is coordinate with the executive branch, and neither branch may exercise the power of the other. City Council of the City and County of Honolulu v. Fasi, 52 Haw. 3, 467 P.2d 576 (1970); Akahane v. Fasi, 58 Haw. 74, 565 P.2d 552 (1977); Harris v. DeSoto, 80 Hawai'i 425, 911 P.2d 60 (1996).

ARTICLE II -
POWERS AND PURPOSES OF THE CITY

Section 2-101. Powers –

The city shall have and may exercise all powers necessary for local self-government and any additional powers and authority which have been or may be hereafter granted to it, subject only to the general laws of this state allocating and reallocating powers and functions pursuant to Article 8, Section 2 of the Constitution of the State of Hawaii. The enumeration of express powers in this charter shall not be exclusive. In addition to these enumerated express powers and those implied thereby, the city shall have and may exercise all powers it would be competent for this charter to enumerate expressly.

Note

1978 Legislature changed article number from VII to 8.

Section 2-102. Purposes –

All city powers shall be used to serve and advance the general welfare, health, happiness, safety and aspirations of its inhabitants, present and future, and to encourage their full participation in the process of governance.

ARTICLE III - LEGISLATIVE BRANCH

CHAPTER 1 - COUNCIL

Section 3-101. Legislative Power –

The legislative power of the city shall be vested in and exercised by the city council, except as otherwise provided by this charter.

Section 3-102. Number, Election and Terms of Office of Councilmembers –

The council shall consist of nine members. One member shall be elected from each of the nine districts hereinafter provided. Except as provided in Section 16-122, the regular terms of office of councilmembers shall be four years beginning at twelve o'clock meridian on the second day of January following their election. The terms shall be staggered in accordance with Section 16-122. No person shall be elected to the office of councilmember for more than two consecutive four-year terms. *(Reso. 83-357; 1992 General Election Charter Amendment Question No. 2; 1998 General Election Charter Amendment Question No. 8(I))*

Section 3-103. Reapportionment and Reapportionment Years –

1. The year 1991 and every tenth year thereafter shall be reapportionment years.
2. A council reapportionment commission shall be constituted on or before the first day of July of each reapportionment year and whenever reapportionment is required by court order. The commission shall consist of nine members. The presiding officer of the council shall, with the approval of the council, select the members of the commission, no more than a majority of who shall be from the same political party.

The commission shall elect a chair from among its members. Any vacancy in the commission shall be filled in the same manner as for an original appointment. The commission shall act by majority vote of its membership and shall establish its own procedures. The members of this commission shall not, in any manner, be deemed officers of the city. The commission and its members shall be subject only to the provisions of this section, Section 3-114, and Section 3-502 of the charter. Commission members shall be compensated and reimbursed for their necessary expenses as provided by ordinance. No member of the commission shall be eligible to become a candidate for election to the council in the initial election held under any reapportionment plan adopted by the commission.

The city clerk, under the direction of the commission, shall furnish all necessary technical and secretarial services. The council shall appropriate funds to enable the commission to carry out its duties.

3. In effecting reapportionment, the commission shall be guided by the following criteria:

(a) No district shall be so drawn as to unduly favor a person or political faction.
(b) Districts, insofar as practicable, shall be contiguous and compact.
(c) District lines shall, where possible, follow permanent and easily recognized features, and, when practicable, shall coincide with census tract boundaries.

4. On or before January 2 of the year following appointment, the commission shall file with the city clerk a reapportionment plan, which shall be applicable to the next succeeding election at which councilmembers are elected to regular terms.

5. Any duly registered voter may petition the proper court to compel, by mandamus or otherwise, the appropriate person or persons to perform their duty or to correct any error made in a reapportionment plan, or the court may take such other action to effectuate the purposes of this section as it may deem appropriate. Any such petition must be filed within forty-five days after the filing of a reapportionment plan.

6. In order to commence the staggering of councilmembers' terms in accordance with Section 16-122, the reapportionment plan for 2002 shall retain the council district numbering of I, II, III, IV, V, VI, VII, VIII, and IX. *(Reso. 83-357 and 88-242; 1992 General Election Charter Amendment Question Nos. 1 and 32A(14); 1998 General Election Charter Amendment Question No. 8(II); Reso. 02-39)*

Notes

To be "from the same political party," within the purview of the city and county charter provision governing composition of reapportionment commission, means to be a member of the same political party recognized as such by that party and the member. Coray v. Koga, 56 Haw. 519, 542 P.2d 1272 (1975).

City charter criteria require compact and contiguous council districts, and do not refer to communities. Kawamoto v. Okata, 75 Haw. 463, 868 P.2d 1183 (1994), reconsideration denied, 75 Haw. 580, 871 P.2d 795.

Section 3-104. Qualifications of Councilmembers –

To be eligible for election or appointment to the council, a person must be a duly qualified elector of the council district from which the person seeks to be elected or appointed. Any councilmember who removes his or her residence from the district from which the councilmember was elected or appointed shall, by that fact, be deemed to have vacated the office. *(1992 General Election Charter Amendment Question No. 17; Reso. 04-113)*

Section 3-105. Vacancy in Office –

A vacancy in the office of any councilmember shall be filled in the following manner:

(a) If the unexpired term is less than one year, the remaining members of the council shall elect a successor with requisite qualifications to fill the vacancy for the unexpired term. Vacancies shall be filled only at a regular meeting of the council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the council by the presiding officer. Should the council fail to fill any vacancy within thirty days after its occurrence, the mayor shall appoint a successor to fill the vacancy for the unexpired term.
(b) If the unexpired term is for one year or more, the vacancy shall be filled by special election to be called by the council within ten days and to be held within sixty days after the occurrence of the vacancy. At such time, the electors of the district shall elect a successor to fill the vacancy for the remainder of the term. If any special or general election is to be held in the

city after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election shall be held in conjunction with such other election.

(Reso. 83-357)

Note

Use of term "successor" bars councilman whose recall or resignation created the vacancy from running in election to succeed himself. Mink v. Pua, 68 Haw. 263, 711 P.2d 723 (1985); Republican Party of Hawaii v. Mink, 476 U.S. 1101, 106 S. Ct. 1942, 90 L. Ed. 2d 352 (1986).

Section 3-106. Removal of Councilmembers –

Any councilmember may be removed by recall or impeachment as provided in Article XII of this charter. *(Reso. 83-357 and 84-197)*

Section 3-107. Organization of Council; Officers; Rules; Meetings; Employees –

1. The council shall meet in the council room at the city hall for its organization at twelve o'clock meridian on the second day of January of every odd-numbered year or on the next business day if the second day be a Sunday or a holiday. At the meeting, the council shall elect one of its councilmembers as chair and presiding officer of the council. It shall also elect one of its councilmembers as vice-chair who shall act as the presiding officer in the event of the chair's absence or disability. The council shall appoint a presiding officer pro tempore from its own members in the event of the absence or disability of both the chair and the vice-chair. All councilmembers shall have the right to vote in the council at all times. A majority of the entire membership of the council shall constitute a quorum and, except as otherwise provided, the affirmative vote of a majority of the entire membership shall be necessary to take any action.
2. The council shall adopt rules governing its officers and employees, the organization of committees and the transaction of business.
3. The council shall keep a journal of its proceedings in which the ayes and noes shall be entered as required by this charter or at any other time upon the demand of any member.
4. The council may suspend, without pay for not more than one month, any member for disorderly or contemptuous behavior in its presence, upon an affirmative vote of at least two-thirds of its entire membership. The presiding officer or the council may, by a majority vote, expel any other person who is guilty of disorderly, contemptuous or improper conduct at any meeting.
5. The council may authorize the employment of special counsel to represent it, upon the affirmative vote of at least two-thirds of its entire membership. Any such authorization shall specify the compensation, if any, to be paid such special counsel, and the council shall make an appropriation therefor.
6. The presiding officer of any committee of the council or a majority of the committee may expel any person who is guilty of disorderly, contemptuous or improper conduct at any committee meeting.
7. The council may establish an office of council services and create such positions therein as it deems necessary to assist it in the exercise of its legislative power. The council shall fix the salaries of such positions by ordinance. Funds appropriated for such salaries shall be allotted by, and the persons holding such positions shall be appointed by and serve under the direction of, the presiding officer of the council. Staff shall be appointed in a manner consonant with the merit principles set forth in Section 6-1102 of this charter, but shall not otherwise be subject to the provisions of Chapter 11 of Article VI of this charter, pursuant to Section 6-1104 of this charter.

The council may authorize attorneys within the office of council services to represent it in court litigation where the dispute is with the Executive Branch and where the corporation counsel may represent the Mayor or officers of the Executive Branch. In the event that attorneys within the office of council services should be authorized to represent the city council, those staff attorneys shall be deemed to have the status of "special counsel."

8. The council shall hold regular meetings and shall meet at least once each month. All meetings of the council shall be open to the public, and every vote taken by the council shall be by open ballot. Any councilmember who has a direct personal financial interest in any matter on which a vote is taken may abstain from voting after declaring the conflict of interest. The council shall adopt rules governing abstention from voting. With the exception of consultations with the corporation counsel on claims where premature public disclosure of information would adversely affect the city's interest and consultation with its own counsel or staff, all council committee meetings shall be open to the public. The council may adjourn to any meeting place, provided notice of the time and place of the meeting is published at least three days prior to such meeting in a daily newspaper of general circulation in the city, and notice is also given to all councilmembers at least three days prior to the meeting.

9. The council shall, prior to making its decisions on confirmations, hold public hearings on the appointees of the mayor. *(Reso. 78-277, 83-357 and 84-197; 1992 General Election Charter Amendment Question No. 7; 1998 General Election Charter Amendment Question No. 8(III))*

Notes

Following charter revision, power of council to retain special counsel to represent it was enlarged from one exercisable only for a matter presenting a real necessity for such employment to one exercisable without express limitation. City Council v. Sakai, 58 Haw. 390, 570 P.2d 565 (1977).

Municipal charter permitted city council to confer with corporation counsel on existing or potential claims where premature public disclosure would adversely affect city's interest; council is not required to wait until claim is actually asserted before attorney-client privilege attaches. Hui Malama Aina O Ko'olau v. Pacarro, 4 Haw. App. 304, 666 P.2d 177 (1983).

Section 3-108. Applicability of Certain General Provisions --

The council and its employees shall be subject to the provisions of this charter relative to the procurement of materials, supplies, equipment, services and the disposal of personal property, excepting the provisions relative to independent contractual services and except as otherwise provided in Subsection 9-106.1 of this charter. *(Reso. 84-197)*

Section 3-109. Mayor May Appear Before Council --

The mayor may attend any meeting of the council or any of its committees and may express the mayor's views. The mayor may propose any resolution or ordinance, or amendments thereto, but shall have no right to vote thereon. *(Reso. 83-357 and 84-197)*

Section 3-110. Condemnation --

The council shall by resolution determine and declare the necessity of taking property for public purposes, describing the property and stating the uses to which it shall be devoted. *(Reso. 84-197)*

Section 3-111. Annual Budget for the Legislative Branch –

The budget for the legislative branch for the ensuing fiscal year shall be in the form submitted by the council. It shall be prepared and available for public review not later than one hundred twenty days prior to the end of the current fiscal year. Appropriations to fund the activities of the legislative branch shall only be made through the annual legislative budget ordinance and amendments or supplements thereto. *(Reso. 84-197)*

Section 3-112. Revenue Program –

The council, at the meeting at which the annual legislative and executive budget ordinances are enacted, shall also enact such measures as will yield sufficient moneys, together with available surplus and other available moneys, to balance the budget.

The council shall by ordinance fix the fees and charges for all services rendered by the city and for the use of city property and facilities, except as otherwise provided by this charter. The council may specifically delegate this authority to the executive branch as it deems necessary or desirable. *(Reso. 84-197)*

Section 3-113. Annual Operating and Capital Program and Budget for the Executive Branch –

The council shall adopt an executive operating and capital program and enact the necessary budget ordinances annually and provide for the financing thereof. *(Reso. 84-197)*

Section 3-114. Financial and Performance Audits –

1. Financial Audit. The council shall provide for the city auditor to conduct or cause to be conducted within thirty days after the beginning of each fiscal year an independent financial audit of all operations of the city and all operations for which the city is responsible and of their funds and accounts for the audited fiscal year. The financial audit shall be conducted by a certified public accountant or a firm of certified public accountants. The scope of the audit shall be in accordance with the terms of a written contract to be signed by the presiding officer of the council, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the audited fiscal year. A copy of the audit report shall be transmitted to the mayor and to the council, shall be filed with the city clerk, and shall be a public record.

2. Performance Audit. The council may, at any time by adoption of a resolution, provide for and direct the city auditor to conduct or cause to be conducted a performance audit of any agency or operation of the city. The scope of the audit shall be set forth in the resolution and may include the following objectives:

(a) Examination and testing of processes to determine whether the laws, policies and programs of the city are being carried out in the most effective, efficient and economical manner.
(b) Examination and testing of internal control systems to ensure that such systems are properly designed to safeguard public assets against loss from waste, fraud, or error, to promote efficient operations, and to encourage adherence to prescribed management policies.
(c) Recommendations for changes in the organization, management and processes which will produce greater efficiency and effectiveness in meeting the objectives of the programs or operations carried out.

The audit resolution shall provide for the completion of the audit within one calendar year. A copy of the audit report shall be filed with the city clerk and be a public record.

3. For the purpose of this section, "agency or operation of the city" means the same as defined under Section 3-502. *(Reso. 78-278, 84-197 and 02-39)*

Section 3-115. Adoption of the Pay Plan –

All persons employed in the executive branch of the city or by any of its boards or commissions, whether as officers or otherwise, except those whose pay is otherwise provided for, shall be paid in accordance with a pay plan recommended by the mayor and enacted with or without modification by ordinance. The pay plan for those persons holding positions in the position classification plan shall be in accordance with Section 6-1109 of this charter.
(Reso. 84-197, 90-295 and 95-205)

Section 3-116. Creation of General Debt –

1. The council may authorize the issuance of general obligation bonds not to exceed the amount and only for the purposes prescribed by the Constitution of the State of Hawaii, by the affirmative vote of at least two-thirds of its entire membership.

2. Each bond authorization shall relate to not more than one issue and shall specify the purpose for which moneys are to be borrowed and the maximum amount of bonds to be issued for that purpose. This provision shall not be construed to prohibit the sale and issuance of single bond issues for multiple purposes, each of which purposes has been authorized.

3. The council may provide for the refunding of general obligation bonds. *(Reso. 84-197)*

Section 3-117. Creation of Special Assessment Debt –

The council may authorize the issuance of improvement bonds to finance assessable public improvements in the manner provided by this charter and by ordinance. *(Reso. 84-197)*

Section 3-118. Revenue Bond Indebtedness –

The council may authorize the issuance of revenue bonds for the purpose of initiating, constructing, acquiring, extending, replacing or otherwise improving any revenue-producing facility as provided by law and may provide for the refunding of such bonds. *(Reso. 84-197)*

Section 3-119. Temporary Borrowing –

1. The council may borrow in any fiscal year in anticipation of revenues to be derived from taxes for that year, and for any of the purposes to which the revenues are appropriated. No such borrowing shall be in excess of twenty-five percent of the amount of the uncollected taxes of that year.

2. When any warrants are presented to the city for payment and the same are not paid for want of funds, the director of budget and fiscal services shall issue a warrant note, equal in amount to the face value of the warrant or warrants so presented for payment. The warrant note shall be in a form and shall be due at a date prescribed by the director of budget and fiscal services. It shall bear interest at the lowest obtainable rate per annum. The notes shall be a first charge on the moneys of any fund against which the warrants are issued.

3. The council upon recommendation of the mayor may authorize the director of budget and fiscal services to obtain temporary loans from the state. *(Reso. 84-197; 1998 General Election Charter Amendment Question No. 2(I))*

Section 3-120. Investigation –

1. The council, or any authorized committee thereof, shall have the power to conduct investigations of:

(a) The operation of any agency or function of the city.

(b) Any subject upon which the council may legislate.

2. In investigations conducted by the council or by any committee of the council, the presiding officer shall have the right to administer oaths and, in the name of the council, to subpoena witnesses and compel the production of books and papers pertinent thereto. If any person subpoenaed as a witness or to produce any books or papers called for by the process of the council shall fail or refuse to respond thereto, or refuse to answer questions propounded by any member of the investigating body or its counsel material to the matter pending before such body, the proper court, upon request of the council, shall have power to compel obedience to any process of the council and require such witness to answer questions put to said witness as aforesaid and to punish, as a contempt of the court, any refusal to comply therewith without good cause shown therefor.

False swearing by any witness shall constitute perjury and be punished as such, and, whenever the council is satisfied that a witness has sworn falsely in any hearing or investigation, it shall report the same to the prosecuting attorney for prosecution.

3. In any investigation which concerns the alleged gross misconduct or alleged criminal action on the part of any individual, such individual shall have the right to be represented by counsel, the right of reasonable cross-examination of witnesses and the right to process of the council to compel the attendance of witnesses on the person's own behalf. *(Reso. 83-357 and 84-197)*

Section 3-121. Creation of Semi-Autonomous Agencies –

1. The city may by ordinance create special proprietary semi-autonomous agencies as may be necessary. Any such agency shall function as a public body, corporate and politic, with the authority to sue and be sued and may be granted such other powers as may be necessary or convenient for its purposes.

2. Any such agency shall be subject to the civil service provisions and centralized purchasing and disposal of personal property provisions of this charter and shall come within the purview of the performance audit conducted by the managing director and such audits as may be required by the council or conducted by the city auditor.

3. Pensions for officers and employees of any such agency shall be governed by law. *(Reso. 83-357, 84-197, 90-295, 95-205 and 02-39)*

Section 3-122. Salary Commission –

1. There shall be an independent salary commission to establish the salaries of all elected officials, including the mayor, councilmembers, and prosecuting attorney, and the following appointed officials: managing director, deputy managing director, department head, deputy department head, and band director. The commission shall also establish schedules for salaries of deputies of the corporation counsel and prosecuting attorney. The commission shall consist of seven members, who shall serve for staggered terms of five years and until their successors have been appointed and qualified. The initial appointments shall commence no later than January 15, 1993, and shall be as follows:

(1)	Two members, one appointed by the mayor and one appointed by the council	Two years
(2)	Two members, one appointed by the mayor and one appointed by the council	Three years
(3)	Two members, one appointed by the mayor and one appointed by the council	Four years

(4)	One member appointed by the mayor and confirmed by the council	Five years

Each succeeding appointment shall be for a term ending five years from the date of the expiration of the term for which the predecessor had been appointed. The commission shall elect a chair from among its members and the commission shall act by a majority vote of its membership. Any vacancy shall be filled in the same manner as for an original appointment.

2. The commission shall convene annually no later than the first day of February, and shall, after public hearing, establish salaries and salary schedules no later than the first day of May subsequent thereto, said salaries and salary schedules to be effective prospectively from the first day of the fiscal year subsequent to their adoption by the commission. The commission may meet at other times during the year pursuant to its own rules, but may alter salaries and salary schedules no more than once annually. Any action of the commission altering salaries shall be by resolution accompanied by findings of fact. Said resolution shall be forwarded to the mayor and the council but shall take effect without their concurrence sixty calendar days after its adoption unless rejected by a three-quarters vote of the council's entire membership. The council may reject either the entire resolution or any portion of it.

3. The commission shall set salaries in accordance with the principles of adequate compensation for work performed, and preservation of a sensible relationship with the salaries of other city employees.

4. The commission shall establish its rules of procedure and adopt rules and regulations pursuant to law.

5. The commission shall employ consultants and staff as is necessary to assist it in the performance of its duties.

6. The members of the salary commission shall serve without compensation but shall be reimbursed for expenses, including travel expense necessary for the performance of their duties. *(Reso. 83-357 and 84-197; 1992 General Election Charter Amendment Question No. 13; 1998 General Election Charter Amendment Question No. 3(IV))*

Section 3-123. Affordable Child Day Care Program on Park Property --

The council may permit a park or recreational facility owned or controlled by the city to be used for the operation of free, affordable or not-for-profit child day care programs. *(Reso. 94-150)*

Section 3-124. Temporary Replacement of Councilmember Called to Active Military Duty --

1. A person may be appointed to temporarily replace a councilmember who, as a member of the military reserve or national guard, is called to active duty to serve in the United States armed forces for a period in excess of 180 consecutive days out of the State of Hawaii. An appointment shall be made pursuant to this section.

2. For this section:

(a) A call to active duty that is indefinite or unclear as to period or location of active duty shall not be deemed for a "period in excess of 180 consecutive days out of the State of Hawaii" nor deemed sufficient for the appointment of a temporary replacement councilmember.

(b) "Temporarily replaced councilmember" means the councilmember who is temporarily replaced because of a call to active duty.

(c) "Temporary replacement councilmember" means the councilmember who is appointed to temporarily replace a councilmember called to active duty.

(d) "Written call-up order" means an order in writing from an authorized United States officer that requires a councilmember who is in the military reserve or guard to report for active duty in the United States armed forces.

3. After a councilmember receives a written call-up order for a period in excess of 180 consecutive days out of the State of Hawaii, the councilmember may submit to the council chair a written request for the appointment of a temporary replacement councilmember. The written request shall be accompanied by a copy of the order.

(a) The council may appoint a temporary replacement councilmember for the councilmember who requested the replacement by adoption of a resolution. Such a resolution shall be adopted by the affirmative vote of a majority of the council's entire membership within 60 days of receipt of the written request by the council chair.

(b) If the council does not adopt a resolution appointing a temporary replacement councilmember pursuant to paragraph (a) within the specified 60-day period:

(1) The council shall not have any further opportunity to appoint a temporary replacement councilmember for the councilmember who requested the temporary replacement; and

(2) The mayor may make the appointment of a temporary replacement councilmember by written proclamation at any time after the 60th day. Such a written proclamation shall be immediately submitted to the council.

4. When a temporary replacement councilmember vacates office before the end of the temporary term because of the temporary replacement councilmember's death or disability, a new temporary replacement councilmember may be appointed in accordance with subsection 3; provided that the 60-day period for council appointment of the new temporary replacement councilmember shall commence when the previous temporary replacement councilmember vacates office. Only once may a new temporary replacement councilmember be appointed in accordance with this paragraph to replace a previous temporary replacement councilmember who vacates office because of death or disability. If the new temporary replacement councilmember vacates office before the end of the temporary term, another new temporary replacement councilmember shall not be appointed.

No person shall be appointed to replace a temporary replacement councilmember who vacates office before the end of the temporary term for reason other than the temporary replacement councilmember's death or disability.

5. A temporary replacement councilmember appointed under subsection 3 or 4 shall have the requisite qualifications of Section 3-104.

6. The term of office of the temporary replacement councilmember shall:

(a) Begin on the date set forth in the resolution or proclamation, but no earlier than the applicable of the following: (1) if the appointment is made under subsection 3(a), the date the temporarily replaced councilmember reports for active duty, (2) if the appointment is made under subsection 3(b), the date of receipt of the written proclamation by the council, or (3) if the appointment is made under subsection 4, the date the previously appointed temporary replacement councilmember vacates office; and

(b) Terminate on the earliest of the following: (1) the date the council receives written notice from the temporarily replaced councilmember that the councilmember's active duty has ended and the councilmember desires to return to office; (2) the date the temporarily replaced councilmember's term of office expires; or (3) the date the temporarily replaced councilmember vacates office.

7. If a temporarily replaced councilmember vacates office before the expiration of the councilmember's term, a successor shall be appointed pursuant to Section 3-105.

8. While in office, a temporary replacement councilmember shall have the compensation, benefits, rights, privileges, powers, duties, and functions of a councilmember.

While out of office, the temporarily replaced councilmember shall not have the compensation, benefits, rights, privileges, powers, duties, or functions of a councilmember, except as otherwise provided under federal or state law.

9. A temporarily replaced councilmember who has had a temporary replacement appointed, but whose active duty out of the State of Hawaii ends on or before the expiration of the 180-day period specified under subsection 1, shall not be subject to any penalty from the council. The fact that the temporarily replaced councilmember's active duty out of the State of Hawaii ends on or before the elapse of the 180-day period shall not retroactively invalidate the past appointment of the temporary replacement councilmember nor void any official act of that temporary replacement councilmember.

10. The council by ordinance may establish other policies and procedures that are consistent with this section to further implement this section. *(Reso. 04-113)*

CHAPTER 2 - ORDINANCES AND RESOLUTIONS

Section 3-201. Actions of the Council –

Every legislative act of the council shall be by ordinance. Non-legislative acts of the council may be by resolution, and except as otherwise provided, no resolution shall have force or effect as law. The enacting clause of every ordinance shall be "Be it ordained by the people of the City and County of Honolulu" and the enacting clause of every resolution shall be "Be it resolved by the council of the City and County of Honolulu."

Notes

City Council is exempt from the purview of the Hawaii Administrative Procedure Act (Hawaii Revised Statutes Chapter 91) when performing either legislative or non-legislative activities. Sandy Beach Defense Fund v. City Council, 70 Haw. 361, 773 P.2d 250 (1989).

Ordinance must conform to, be subordinate to, not conflict with, and not exceed municipal charter, nor may ordinance change or limit charter's effect. Harris v. DeSoto, 80 Hawai'i 425, 911 P.2d 60 (1996). Ordinance which conflicts with express provision of charter is invalid. Fasi v. City Council of the City and County of Honolulu, 72 Haw. 513, 823 P.2d 742 (1992).

City council may exercise its non-legislative power by resolution or by resorting to some other parliamentary procedure, such as by voting on a motion made at council meeting. Life of the Land, Inc. v. City Council of the City and County of Honolulu, 61 Haw. 390, 606 P.2d 866 (1980); Protect Ala Wai Skyline v. Land Use and Controls Committee of the City Council of the City and County of Honolulu, 6 Haw. App. 540, 735 P.2d 950 (1987).

Section 3-202. Introduction, Consideration and Passage of Ordinances and Resolutions –

1. Every proposed ordinance shall be initiated as a bill and shall be passed only after three readings on separate days. The vote on final passage shall be taken by ayes and noes and entered in the journal. Full readings of bills may be required by one-third vote of the entire membership of the council.

2. Every ordinance of the council shall embrace but one subject, which shall be expressed in its title. If an ordinance embraces any subject not expressed in its title, only that subject shall be void.

3. No bill shall be so amended as to change its original purpose. On the demand of at least four members, any bill shall, after amendment, be laid over for one week before its final reading. Every bill, as amended, shall be in writing before final passage.

4. When a bill fails to pass on final reading and a motion is made to reconsider, the vote on such motion shall not be acted upon before the expiration of twenty-four hours.

5. Ordinances shall take effect on the date specified therein or, in the absence of such specification, upon approval thereof by the mayor.

6. Except as otherwise provided in this charter, resolutions may be adopted on one reading by the affirmative vote of a majority of the entire membership of the council taken by ayes and noes and entered into the journal. The reading shall be in full, except by unanimous consent of all councilmembers present, in which case the reading may be by title only.

7. Bills embracing (a) the fixing of special assessments for the cost of improvements, (b) the appropriation of public funds or the authorization of the issuance of general obligation bonds or (c) the imposition of a duty or penalty on any person shall pass second reading by a vote taken by ayes and noes, and digests of such bills shall be advertised once in a daily newspaper of general circulation in the city and may be advertised, as deemed helpful, in other newspapers, with the ayes and noes, at least three days before final reading by the council. Not less than three copies of such bills shall be filed for use and examination by the public in the office of the city clerk at least three days prior to the final reading thereof.

8. All ordinances shall be promptly advertised once by title only in a daily newspaper of general circulation in the city and may be advertised, as deemed helpful, in other newspapers, with the ayes and noes, after enactment. Unless otherwise provided, resolutions need not be advertised either before or after adoption.

9. Resolutions authorizing proceedings in eminent domain shall not be acted upon on the date of introduction, but shall be laid over for at least one week before adoption. Such resolutions shall be advertised once in a daily newspaper of general circulation and may be advertised, as deemed helpful, in other newspapers at least three days before adoption by the council. Not less than three copies of such resolutions shall be filed for use and examination by the public in the office of the city clerk at least three days prior to the adoption thereof. Upon adoption, every such resolution shall be presented to the mayor, who may approve or disapprove it pursuant to applicable provisions governing the approval or disapproval of bills.

10. Should the council find, by a two-thirds vote of its entire membership, the existence of any emergency due to a public calamity, it may waive all of the requirements of this section of the charter pertaining to procedure, except those relating to the number of votes required for passage and the recording of the vote in the journal. *(Reso. 83-357)*

Note

It is sufficient if the title of an ordinance fairly indicates to the ordinary mind the general subject of the act, is comprehensive enough to reasonably cover all of its provisions, and is not calculated to

mislead. Schwab v. Ariyoshi, 58 Haw. 25, 564 P.2d 135 (1977), citing Territory v. Dondero, 21 Haw. 19 (1912).

Section 3-203. Submission of Bills to the Mayor –

1. Every bill which has passed the council and has been duly authenticated by the city clerk and the presiding officer of the council shall be presented to the mayor for the mayor's approval. If the mayor approves it, the mayor shall sign it, and it shall then become an ordinance. If the mayor disapproves it, the mayor shall specify the objections thereto in writing and return the bill to the city clerk with the objections within ten days (excluding Saturdays, Sundays and holidays) after receiving it. If the mayor does not return it disapproved within that time, it shall take effect as if the mayor had signed it. The objections of the mayor shall be entered at large in the journal of the council, and the council may, after five and within thirty days after the bill has been so returned to the city clerk, reconsider the vote upon the bill. If the bill, upon reconsideration, is again passed by the affirmative vote of not less than two-thirds of the entire membership of the council, the presiding officer shall verify that fact on the bill, and, when so certified, the bill shall then become an ordinance with like effect as if it had been signed by the mayor. If the bill fails to receive the vote of at least two-thirds of the entire membership of the council, it shall be deemed finally lost. The vote upon reconsideration shall be taken by ayes and noes and entered in the journal.

2. If any bill appropriating money is presented to the mayor, the mayor may veto any item or items or portion or portions thereof by striking out or reducing the same. In the case of such a veto, the mayor shall append to the bill, at the time of signing it, a statement of the item or items or portion or portions thereof to which the mayor objects and the reasons therefor, and the item or items or portion or portions thereof, so vetoed, shall not take effect unless passed notwithstanding the mayor's veto. Each item so vetoed may be reconsidered by the council in the same manner as bills which have been disapproved by the mayor. *(Reso. 83-357)*

Section 3-204. Amendment, Revision or Repeal; Adoption of Codes by Reference –

1. No ordinance shall be amended, revised or repealed by the council except by ordinance. No resolution shall be amended, revised or repealed except by resolution, but a resolution may be superseded by a subsequent ordinance.

2. Any ordinance or resolution may be repealed by reference to its number or section number. Revisions or amendments may be made in the same manner, but the same, or the section, subsection or paragraph thereof, revised or amended, shall be re-enacted at length as revised or amended; but when the amendment consists of adding new sections, subsections or paragraphs or substituting a word, term or number for another word, term or number, it shall be sufficient to enact the new matter alone, if reference thereto is made in the title.

3. Any code or portions thereof may be adopted by reference thereto by the enactment of an ordinance for that purpose. The code or portions thereof need not be published in the manner required for ordinances, but not less than three copies thereof shall be filed for use and examination by the public in the office of the city clerk not less than fifteen days prior to the final reading thereof, and notice of the availability of said copies shall be published by the city clerk.

Section 3-205. Codification of Ordinances –

1. Within two years of the effective date of this charter, the council shall cause a code to be prepared containing all of the ordinances of the city which are appropriate for continuation as law. The code may be prepared by the corporation counsel or the council may contract for its

preparation by professional persons or organizations experienced in the revision and codification of ordinances or statutes.

2. The code may be adopted by reference by the passage of an ordinance for that purpose. No publication of the code shall be required, but not less than three copies of the code shall be filed for use and examination by the public in the office of the city clerk at least sixty days prior to the adoption thereof.

3. All proposed ordinances of general application introduced after the approval of the code shall be adopted as amendments of or additions to the code and by reference thereto.

CHAPTER 3 - CITY CLERK

Section 3-301. Powers, Duties and Functions –

1. The council shall appoint and fix the salary of the city clerk.
2. The city clerk shall:
   (a) Be the clerk of the council.
   (b) Take charge of, safely keep and dispose of all books, papers and records which may properly be filed in the city clerk's office and keep, in separate files, all ordinances and resolutions and cumulative indices of the same or exact copies thereof, enacted or adopted by the council, and all rules and regulations.
   (c) Have custody of the city seal, which shall be used to authenticate all official papers and instruments requiring execution or certification by the city clerk. A copy of the impress thereof, certified to be genuine, and also a copy of such seal when altered or changed by the council, shall be filed in the office of the lieutenant governor.
   (d) Conduct all elections held within the city and perform voter registration functions pursuant to this charter or the laws of the state.
   (e) Perform such other functions as required by this charter or by law.
3. The city clerk may appoint the necessary staff for which appropriations have been made by the council.
4. Subject to the provisions of this charter and applicable rules and regulations adopted thereunder, the city clerk shall have the same powers with respect to the personnel of the city clerk's office as the department heads in the executive branch. *(Reso. 83-357)*

CHAPTER 4 - ORDINANCES BY INITIATIVE POWER

Section 3-401. Declaration –

1. Power. The power of electors to propose and adopt ordinances shall be the initiative power.

2. Limitation. The initiative power shall not extend to any ordinance authorizing or repealing the levy of taxes, the appropriation of money, the issuance of bonds, the salaries of county employees or officers, or any matter governed by collective bargaining contracts. *(Petition No. 17 (1982))*

Note

The enactment of amendments to a county's detailed land use development plan and zoning through the initiative process is inconsistent with the requirement of State law that land use and zoning decisions be made in accordance with, and with the purpose of, implementing a long range, comprehensive general plan, and, therefore, such amendments are invalid. Kaiser Hawaii Kai Development Co. v. City and County of Honolulu, 70 Haw. 480, 777 P.2d 244 (1989).

Section 3-402. Procedure for Enactment and Adoption –

1. Petition. An ordinance may be proposed by petition, signed by duly registered voters equal in number to at least ten percent of the total voters registered in the last regular mayoral election for submission to the electors at a general election. A petition that specifies that an initiative special election be called shall be signed by duly registered voters equal in number to at least fifteen percent of the total voters registered in the last mayoral election.

2. Form of Petition. Each voter signing such petition shall add to the signature, the voter's printed name, residence, and the date of signing.

3. Affidavit on Petition. Signatures may be on separate sheets, but each sheet shall have appended to it the affidavit of the person who circulated that sheet of the petition, that, to the best of the affiant's knowledge and belief, the persons whose signatures appear on the sheet are duly registered voters of the city, that they signed with full knowledge of the contents of the petition and that their residences are correctly given.

4. Proposed Ordinance. Such petition shall set forth the proposed ordinance, or a draft of the proposed ordinance may be attached and made a part of such petition. *(Petition No. 17 (1982); Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 15 and 32A(7); 2006 General Election Charter Amendment Question No. 12(f); Reso. 10-64)*

Note

The charter provision that an ordinance may be proposed by petition signed by duly registered voters equal in number to at least ten percent of the "total voters registered" in the last regular mayoral election, applies as a threshold number whether petitioners submit the petition for proposed ordinance for a general election, a scheduled special election, or an initiative special election. Stop Rail Now v. De Costa, 122 Hawai'i 217, 225 P.3d 659 (Haw. Ct. App. 2009). Superseded in part by subsequent amendment in Reso. 10-64.

Section 3-403. Filing and Examination of Signatures on Petition –

1. Duty of City Clerk. A petition proposing an ordinance shall be tendered in its entirety for filing with the city clerk with a transmittal letter to the city clerk. Upon filing of such petition with the city clerk, the city clerk shall examine it to determine whether it contains a sufficient number of apparently genuine signatures of duly registered voters. The city clerk may question the genuineness of any signature or signatures appearing on the petition, and if the city clerk finds that any such signature or signatures are not genuine, the city clerk shall, after public disclosure of the signatures in question, disregard them in determining whether the petition contains a sufficient number of signatures.

2. Filing of Petition, When. A petition may be filed with the city clerk at any time except during the period from forty-five days before a city first special election to the day after the certification of the results of the immediately following general election or at the conclusion of any statewide or countywide general election contest, whichever shall last occur. A petition submitted during this period shall be rejected and shall not be accepted for filing by the city clerk.

3. City Clerk to Certify or Reject Petition, When. The city clerk shall eliminate any sheet of

the petition which is not accompanied by the required affidavit of the person who circulated the sheet of the petition or which does not state the same text of the proposed ordinance as the other sheets of the petition. The invalidity of any sheet shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such invalid sheet. The city clerk shall complete the examination of the petition within twenty working days after the date of filing and shall certify the petition or shall reject the petition.

4. Review by the Court. A final determination as to the sufficiency or validity of the petition may be subject to court review. *(Petition No. 17 (1982); Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 32A(7) and 32A(8); Reso. 10-64)*

Note

The charter provision that an ordinance may be proposed by petition signed by duly registered voters equal in number to at least ten percent of the "total voters registered" in the last regular mayoral election, applies as a threshold number whether petitioners submit the petition for proposed ordinance for a general election, a scheduled special election, or an initiative special election. Stop Rail Now v. De Costa, 122 Hawai'i 217, 225 P.3d 659 (Haw. Ct. App. 2009). Superseded in part by subsequent amendment in Reso. 10-64.

Section 3-404. Submission of Proposal to Electors –

1. For General Elections. Any petition for proposed ordinance which has been filed with the city clerk before the forty-fifth day prior to the city first special election that is held in conjunction with the primary election for that year and which has been certified by the city clerk, shall be submitted to electors for the general election of that year.

2. For Initiative Special Elections. A special election for an ordinance by initiative power shall be called by proclamation within ninety days after the city clerk's certification of the petition if signed by duly registered voters equal in number to at least fifteen percent of voters registered in the last regular mayoral election, and if such petition specifies that a special election be called; provided that if the city clerk certifies less than fifteen percent but at least ten percent of voters registered, the proposed ordinance shall be submitted at the next general election. No special initiative election shall be held if at the time of the filing of the petition, the city first special election or the general election is scheduled within one hundred eighty days of the filing of the petition. If a petition calling for an initiative special election is filed within one hundred eighty days of the city first special election or the general election, the petition shall be deemed to be a petition filed under paragraph 1 above, and if the petition fulfills the requirements of said paragraph 1, the proposed ordinance shall be submitted to the voters at the next general election.

3. Adoption by the Council. If the council introduces and adopts after three separate readings, including a public hearing, the proposed ordinance which was the basis for a petition on or before ten days prior to date of publication of the proposed ordinance as required in this charter, then the proposed ordinance need not be submitted to the electors. *(Petition No. 17 (1982); 1992 General Election Charter Amendment Question No. 32A(7); Reso. 10-64)*

Note

The charter provision that an ordinance may be proposed by petition signed by duly registered voters equal in number to at least ten percent of the "total voters registered" in the last regular mayoral election, applies as a threshold number whether petitioners submit the petition for proposed ordinance for a general election, a scheduled special election, or an initiative special election. Stop Rail Now v. De Costa, 122 Hawai'i 217, 225 P.3d 659 (Haw. Ct. App. 2009).

Superseded in part by subsequent amendment in Reso. 10-64.

Section 3-405. Adoption, Effective Date and Limitation –

1. Adoption and Effective Date of Ordinance. Any proposed ordinance which is approved by the majority of voters voting thereon shall be adopted, and shall become effective ten days after certification of the results of the election, or at the time and under the conditions specified in the ordinance; provided, however, that in the event that two or more proposed ordinances conflict with each other in whole or in part and each is approved by a majority of the voters voting thereon, the proposed ordinance receiving the highest number of votes shall be adopted and shall take effect as aforesaid.

2. No Veto. No ordinance adopted by the initiative power shall be subject to mayoral veto.

3. Limitation Against Council. No ordinance adopted by initiative power shall be amended or repealed by the council within two years after adoption, except as a result of subsequent initiative or by an ordinance adopted by the affirmative vote of at least three quarters of the entire council after public hearing. *(Petition No. 17 (1982); 1992 General Election Charter Amendment Question No. 20)*

Section 3-406. Approval of Alteration –

1. Amendments Made by Corporation Counsel. The petition shall designate and authorize not less than three nor more than five of the signers thereto to approve any alterations in form or language, or any restatement of the text of the proposed ordinance which may be made by the corporation counsel.

2. Restatement of Proposed Ordinance on Ballot. The same designated and authorized signers shall approve any restatement of the proposed ordinance on the ballot. *(Petition No. 17 (1982))*

Section 3-407. Inconsistent Provisions –

All rules, ordinances and Revised Charter provisions which are inconsistent with this chapter shall be superseded by the provisions of this chapter from its effective date. *(Petition No. 17 (1982))*

Section 3-408. Administrative Rules –

The city clerk may promulgate administrative rules to implement this chapter. The rules may establish requirements for a petition and may establish a method for examination of a petition by statistical random sampling examination and provide procedures for challenge of a sampling examination. *(Reso. 10-64)*

CHAPTER 5 -
CITY AUDITOR

Section 3-501. Office Established; City Auditor –

1. There is established within the legislative branch an office of the city auditor, to be headed by a city auditor who shall be appointed by the city council and shall serve for a period of six years, and thereafter, until a successor is appointed. The council shall fix the salary of the city auditor. The council, by a two-thirds vote of its membership, may remove the auditor from office at any time for cause.

2. The city auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification, such as certification as a certified internal auditor or certified public accountant, or have an advanced degree in a relevant field with at least five years experience in the field of government auditing, evaluation, or analysis. A certified internal auditor or certified public accountant shall be preferred. The city auditor shall have a bachelor's degree in accounting, business administration, or public administration or related field. If financial statement audits are conducted, the city auditor shall be a certified public accountant.

3. Except for exercising the right to vote, neither the auditor nor any member of the office of the city auditor shall support, advocate, or aid in the election or defeat of any candidate for city public office.

4. The city auditor may appoint the necessary staff for which appropriations have been made by the council. Subject to the provisions of this charter and applicable rules and regulations adopted thereunder, the auditor shall have the same powers with respect to the personnel of the office of the city auditor as executive branch department heads have over their personnel. Staff shall be appointed by the auditor in a manner consistent with the merit principles set forth in Section 6-1102 of this charter, but shall not otherwise be subject to the provisions of Chapter 11 of Article VI of this charter, pursuant to Section 6-1104 of this charter. *(Reso. 02-39)*

Revision Notes

Citation error, Section 11-302 replaced with Section 6-1102; Section 11-304 replaced with Section 6-1104.

Section 3-502. Powers, Duties, and Functions –

1. It shall be the duty of the city auditor to conduct or cause to be conducted:
   (a) The annual financial audit of the city, as required by Section 3-114;
   (b) Performance audits of the funds, programs, and operations of any agency or operation of the city as requested by the council by resolution, as authorized by Section 3-114;
   (c) Performance and financial audits of the funds, programs, and operations of any agency or operation of the city, as determined by the auditor to be warranted. Before the commencement of each fiscal year, a plan of the audits proposed to be conducted by the auditor during the fiscal year shall be transmitted to the council for review and comment, but not approval. The plan also shall be transmitted to the mayor and filed with the city clerk as public record; and
   (d) Follow-up audits and monitoring of compliance with audit recommendations by audited entities.

The city auditor shall conduct or cause to be conducted all audits in accordance with government auditing standards.

2. Audit findings and recommendations shall be set forth in written reports of the city auditor, a copy of which shall be transmitted to the mayor and to the council and filed with the city clerk as public record.

3. For the purposes of carrying out any audit, the auditor shall have full, free, and unrestricted access to any city officer or employee and shall be authorized to examine and inspect any record of any agency or operation of the city, to administer oaths and subpoena witnesses and compel the production of records pertinent thereto. If any person subpoenaed as a witness or compelled to produce records shall fail or refuse to respond thereto, the proper court, upon request of the auditor, shall have the power to compel obedience to any process of the auditor and to punish, as a contempt of the court, any refusal to comply therewith without good cause. The auditor may retain special counsel, in the manner authorized by the council, to represent the auditor in implementing these powers.

False swearing by any witness shall constitute perjury and shall be referred by the auditor to the prosecuting attorney for prosecution. In any audit which concerns the alleged gross misconduct or alleged criminal conduct on the part of any individual, such individual shall have the right to be represented by counsel and the right to have the auditor compel the attendance of witnesses on behalf of the individual.

4. The city auditor's performance shall be evaluated annually by the council. The city auditor's audit activities shall be subject to quality review in accordance with applicable government auditing standards by a professional, non-partisan, objective group. The written report of the independent review shall be transmitted to the council and mayor and filed with the city clerk as public record.

5. For the purpose of this section and Section 3-114: "Agency or operation of the city" includes any executive agency, semi-autonomous agency, council office, and other establishment of city government supported, in whole or in part, by city or public funds.

"Council office" includes the council itself, the office of a councilmember and the councilmember's immediate staff, the office of the city clerk, the office of council services, a reapportionment commission, and a charter commission. This definition applies only to those sections. It shall not be construed as excluding the office of the city auditor from the legislative branch.

"Record" includes any account, book, paper, and document, and any financial affair, notwithstanding whether any of the preceding is stored on paper or electronically. *(Reso. 02-39)*

Section 3-503. Audit Committee –

1. The council may establish an audit committee, the members of which shall individually advise the city auditor on the following: formulation of the plan of audits proposed to be conducted by the auditor pursuant to Section 3-502.1(c); conduct of audits; follow up of audits; selection of private contractors to perform audits for the city auditor; evaluation of preliminary audit findings and recommendations and city agency, officer, or employee responses to the preliminary findings and recommendations; and evaluation of the city auditor's performance during each fiscal year. If established, the audit committee shall consist of five members:

(a) One member shall be the chair of the council committee with jurisdiction over the executive budget ordinances; and

(b) The other members shall be appointed by the council. The council shall appoint members who are qualified by experience, expertise, and independence to perform the duties of the audit committee. A member appointed by the council shall not hold any other office or position with the city while on the audit committee. The method of

appointment, terms, and specific qualifications of the appointed members shall be established by the council by ordinance or rule. The council also may establish by ordinance or rule provisions for the removal of an appointed member for cause.

The audit committee shall be within the office of the city auditor.

2. Members of the audit committee shall have the power to render advice to the city auditor only on an individual basis. The members may gather and render the advice at meetings closed to the public.

The audit committee shall not have the power to take official actions or make collective decisions based on voting by the members. A quorum shall not be required for the audit committee to meet.

The audit committee is intended to have the duty of advising the city auditor on preliminary audit findings and recommendations and other confidential matters which should not be disclosed prematurely at meetings open to the public. Thus, this subsection is intended to permit the audit committee to gather in closed meetings without violating the state law on open meetings for public agencies.

If, however, a court of competent jurisdiction rules that the audit committee is subject to the state law on open meetings, the audit committee shall comply with the state law. Or, the audit committee may suspend its operation until appropriate amendment is made to the state law to permit the committee to gather in closed meetings.

3. The chair of the audit committee shall be appointed by the council in the manner provided by ordinance or rule.

A meeting of the audit committee may be called by the chair or auditor.

4. Members appointed by the council shall not be entitled to compensation for serving on the committee. The member from the council shall not be entitled to compensation for serving on the committee that is additional to the compensation received as a councilmember. All members, however, shall be entitled to be reimbursed for travel and other necessary expenses incurred by them in the performance of their official duties.

5. Section 13-103 shall not apply to the members of the audit committee. *(Reso. 02-39)*

Revision note

Section revised to conform with the numbering format used in the Charter.

ARTICLE IV -
EXECUTIVE BRANCH – GENERAL PROVISIONS

CHAPTER 1 -
GENERAL ORGANIZATION

Section 4-101. Executive Power –

The executive power of the city shall be vested in and exercised by the mayor, as chief executive officer, except as otherwise provided by this charter.

Section 4-102. Organization of the Executive Branch --

The department of the corporation counsel shall report directly to the mayor. All other executive departments and agencies of the city, excepting the mayor's office staff, the board of water supply and any other semi-autonomous agency, shall be organized as provided in this charter or by ordinance and shall be supervised by and report directly to the managing director as principal administrative aide to the mayor.

Each executive department shall be headed by a single executive, except if otherwise provided by this charter. *(Reso. 90-295 and 95-205; 1998 General Election Charter Amendment Question Nos. 1(I), 2(II) and 3(V))*

Section 4-103. Creation of Advisory Committees --

1. The mayor or department heads, with the approval of the mayor, may each appoint advisory committees for departments. Such advisory committees shall not exist beyond the term of office of the appointing authority.

2. The function of all advisory committees shall be limited to counsel and advice. The members of advisory committees shall not be paid, but their authorized expenses shall be paid from appropriations to the appointing authority. Advisory committees shall have no employees, but each appointing authority shall cause employees of the department to furnish such services as may be needed by the committees. (*Reso. 90-295 and 95-205*)

Section 4-104. Appointment, Confirmation and Removal of Officers and Employees --

1. All department and executive agency heads and the managing director, as provided in Sections 5-201, 6-101, 6-105, 6-201, 6-301, 6-401, 6-501, 6-601, 6-701, 6-801, 6-901, 6-1101, 6-1201, 6-1301, 6-1401, 6-1501, and 6-1701, shall be nominated and, by and with the advice and consent of the council, appointed and may be removed by the mayor, except as otherwise provided by this charter. Department heads shall be duly registered voters of the city and qualifications of department heads shall be as required by this charter.

2. When the position of head of an executive agency becomes vacant and the mayor is the appointing authority, the mayor may temporarily fill the vacancy by granting a commission allowing the nominee to fulfill the responsibilities of the position. The commission shall begin when the mayor submits to the council a request for confirmation. The commission shall expire when the council makes the confirmation decision. If the nominee fails to be confirmed by the council, the nominee shall not be eligible for another interim appointment to the same office.

3. Department heads may appoint the necessary staff for which appropriations have been made by the council.

4. No appointing authority shall appoint any person to any office or position exempted from civil service until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of the person's office or position. *(Reso. 83-357 and 89-389; 1992 General Election Charter Amendment Question Nos. 11 and 32A(1); Reso. 94-267 and 95-80; 1998 General Election Charter Amendment Question Nos. 1(I) and 2(II); 2006 General Election Charter Amendment Question No. 12(b) and (e); Reso. 10-38; Reso 11-47)*

Section 4-105. Powers and Duties of Heads of Executive Agencies --

1. Subject to the provisions of this charter and applicable regulations adopted thereunder, the heads of the executive agencies of city government shall have the power and duty to take all personnel actions.

2. Each head of an executive agency of city government may assign and reassign duties to employees and supervise the performance thereof.

3. Each head of an executive agency of city government may, subject to approval of the mayor or the managing director, prescribe such rules and regulations as are necessary for the organization and internal administration of the executive agency.

4. Rules and regulations affecting the public as may be necessary to the performance of the functions assigned to executive agencies may be promulgated as authorized by this charter or by law. Such rules and regulations, after public notice and public hearing and upon approval by the mayor, shall have the force and effect of law. Each head of an executive agency shall file in the office of the city clerk not less than three copies of such rules and regulations. The rules and regulations may be amended or repealed by the same process required for original promulgation.

5. Each head of an executive agency shall perform such duties not inconsistent with the duties of that office as may be assigned by the mayor. *(Reso. 83-357, 90-295 and 95-205)*

CHAPTER 2 - REORGANIZATION

Section 4-201. Assignment of New Duties and Functions --

New duties and functions may be assigned by the mayor to departments of the executive branch established by this charter, excepting the departments or agencies reporting directly to the mayor. This section shall not apply to the prosecuting attorney, nor shall it apply to the board of water supply or any other semi-autonomous agency created pursuant to this charter. *(1992 General Election Charter Amendment Question No. 27; Reso. 95-205)*

Section 4-202. Executive Reorganization Power --

In the interest of administrative efficiency, effectiveness and economy, the mayor, and only the mayor, may propose to the council that the duties and functions of existing departments or agencies of the executive branch, excepting departments or agencies reporting directly to the mayor and not including semi-autonomous agencies, be changed or departments or agencies be created, combined, rearranged, renamed or eliminated. All such proposals shall be in a form stylistically equivalent to that of a proposal for charter amendment. Such proposal or proposals shall take effect upon approval of the council or sixty days after transmittal to the council unless rejected by a two-thirds vote of the council's entire membership. Within six months thereafter, the corporation counsel, as revisor, shall prepare a supplement of an edition, or a new edition, of the charter which contains the reorganization language previously approved, and said language shall take effect as charter language and may be subsequently published as such.

Not more than twenty departments shall exist at any one time; provided, however, that neither the office of the mayor, the office of the managing director, the prosecuting attorney, nor the board of water supply or any other semi-autonomous agency shall be counted as "departments" for the purpose of this prohibition. *(1992 General Election Charter Amendment Question No. 27; Reso. 95-205; 1998 General Election Charter Amendment Question No. 5(I))*

ARTICLE V -
EXECUTIVE BRANCH – MAYOR AND AGENCIES DIRECTLY UNDER THE MAYOR

Note

The different departments do not constitute legal entities which are separate and apart from the City and County of Honolulu. City and County of Honolulu v. Toyama, 61 Haw. 156, 598 P.2d 168 (1979).

CHAPTER 1 -
MAYOR

Section 5-101. Election and Term of Office –

The electors of the city shall elect a mayor whose term of office shall be four years beginning at twelve o'clock meridian on the second day of January following the mayor's election. No person shall be elected to the office of mayor for more than two consecutive full terms. *(1992 General Election Charter Amendment Question No. 1)*

Section 5-102. Qualifications –

Any duly qualified elector of the city not less than thirty years of age shall be eligible to fill the office of mayor. Upon removal of the mayor's residence from the city, the mayor shall, by that fact, be deemed to have vacated the office. *(Reso. 83-357)*

Section 5-103. Powers, Duties and Functions –

The mayor shall be the chief executive officer of the city. The mayor shall have the power to:

(a) Except as otherwise provided, exercise direct supervision over all agencies enumerated in this article of the charter and other agencies as the mayor may deem desirable and through the managing director exercise supervision over all other executive agencies of the city. The mayor shall provide for the coordination of all administrative activities and see that they are honestly, efficiently and lawfully conducted.

(b) Appoint the necessary staff for which appropriations have been made by the council. This paragraph shall not empower the mayor to appoint the deputy chief and private secretaries to the fire chief and the deputy fire chief.

(c) Create or abolish positions within the executive branch as provided by law. A monthly report of such creation or abolishment of positions shall be made to the council.

(d) Make temporary transfers of positions between departments or between subdivisions of departments.

(e) Except as otherwise provided, recommend to the council a pay plan for all persons employed in the executive branch or any of its boards and commissions, whether as officers or otherwise.

(f) Appoint a personal representative who shall, subject to the mayor's direction, perform such ceremonial functions of the mayor's office and such other duties as the mayor may designate.

(g) Submit an operating and capital program and budget and necessary proposed budget ordinances annually to the council for its consideration and necessary action.
(h) Sign instruments requiring execution by the city, except those which the director of budget and fiscal services or other officer is authorized to sign by this charter, ordinance or resolution.
(i) Present information or messages to the council which, in the mayor's opinion, are necessary or expedient.
(j) In addition to the annual report, make periodic reports informing the public as to city policies, programs and operations.
(k) Call special sessions of the council.
(l) Veto ordinances, resolutions authorizing proceedings in eminent domain and resolutions adopting or amending the general plan.
(m) Have a voice, but no vote, in the proceedings of all boards provided for by this charter or by ordinance.
(n) Enforce the provisions of this charter, the ordinances of the city and all applicable laws.
(o) Exercise such other powers and perform such other duties as may be prescribed by this charter or by ordinance.

(Reso. 83-257, 84-197, 86-237, 90-295, 94-267 and 95-205; 1998 General Election Charter Amendment Question No. 2(III))

Section 5-104. Location of Office –

The mayor's office shall be in the city hall. *(Reso. 84-197)*

Section 5-105. Mayor's Contingency Fund –

The council shall provide, in the annual budget for the executive branch, a contingency fund to be expended by the mayor for such public purposes as the mayor may deem proper. *(Reso. 83-357 and 84-197)*

Section 5-106. Vacancy in Office –

1. A vacancy in the office of mayor caused by death, resignation, removal or disqualification to hold office shall be filled as follows:

(a) If the unexpired term is for less than one year, the council shall, by a majority vote of all of its members, elect one of its members to be mayor for the unexpired term, and a vacancy shall thereupon exist in the council.
(b) If the unexpired term is for one year or more, the vacancy shall be filled by a special election to be called by the council within ten days and to be held within sixty days after the occurrence of the vacancy. The electors of the city shall then elect a successor with requisite qualifications to fill the vacancy for the remainder of the term. If any special or general election is to be held in the city after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election is to be held in conjunction with such other election.

2. Pending the election of a mayor in case of a vacancy or in the temporary absence of the mayor from the state or temporary disability of the mayor, the managing director shall act as mayor. If there is no managing director or if the managing director is unable to act, the director of budget and fiscal services shall then act as mayor. *(Reso. 83-357 and 84-197; 1998 General Election Charter Amendment Question No. 2(III); 1998 General Election Charter Amendment Question No. 3(II), section and subsequent section renumbered)*

Section 5-107. Removal of Mayor –

The mayor may be removed by recall or impeachment as provided in Article XII of this charter. *(Reso. 84-197)*

CHAPTER 2 - DEPARTMENT OF THE CORPORATION COUNSEL

Section 5-201. Organization –

There shall be a department of the corporation counsel headed by a corporation counsel who shall be appointed by the mayor, with the approval of the council, and who may be removed by the mayor.

Section 5-202. Corporation Counsel, Qualifications –

The corporation counsel shall be an attorney licensed to practice and in good standing before the supreme court of the state and who shall have engaged in the practice of law for at least five years.

Section 5-203. Powers, Duties and Functions –

The corporation counsel shall serve as the chief legal adviser and legal representative of all agencies, the council and all officers and employees in matters relating to their official powers and duties. Except as otherwise provided by federal or state law, the determination whether a matter relates to official powers and duties shall be made by the corporation counsel and shall include, among other things, consideration of case law applicable to the concept of course and scope of employment. The corporation counsel shall represent the city in all legal proceedings, except as otherwise provided in this charter. The corporation counsel shall perform all other services incident to the office as may be required by this charter or by law. *(Reso. 78-277 and 83-357; 1992 General Election Charter Amendment Question No. 22)*

Section 5-204. Special Deputies and Counsel –

1. Special deputies may be appointed by the corporation counsel, with the approval of the city council. Such appointments shall be based on a contract specifying the compensation, if any, to be paid a special deputy. The compensation shall be based on the prevailing rate for the specified services to be rendered.
2. No special counsel shall be retained to represent the city or any officer or executive agency, except as otherwise provided in this charter.
3. Where the corporation counsel has been disqualified, special counsel may be retained by any officer or employee in matters relating to the official powers and duties of such officer or employee. The mayor or any councilmember may also retain special counsel in impeachment proceedings. The council shall appropriate the necessary funds to pay reasonable fees for such legal services.
4. Except in circumstances where the corporation counsel has been disqualified, any special deputy or counsel appointed under this section shall be a subordinate of the corporation counsel. *(Reso. 78-237 and 83-357; 1992 General Election Charter Amendment Question No. 22)*

Section 5-205. Service of Legal Process –

Legal process against the city shall be served upon the corporation counsel or any of the corporation counsel's deputies, and in default of finding the corporation counsel or any deputy, upon the mayor, and in default of finding the mayor, then upon any councilmember. When such service is made upon any officer other than the corporation counsel, such officer shall promptly notify the corporation counsel. *(Reso. 83-357, 90-295 and 95-205)*

ARTICLE VI - EXECUTIVE BRANCH – MANAGING DIRECTOR AND AGENCIES DIRECTLY UNDER THE MANAGING DIRECTOR

Notes

In addition to showing amendments to this Charter adopted by the electorate at the 1998 General Election, this article has been extensively rewritten by the corporation counsel pursuant to the authority granted at the 1998 General Election and incorporated into Sections 4-202 and 16-120 hereof. The corporation counsel's redraft was undertaken for the purpose of reflecting the reorganization of these departments proposed by the mayor and agreed to by the council in 1998 pursuant to Resolution No. 98-117, CD-1.

The different departments do not constitute legal entities which are separate and apart from the City and County of Honolulu. City and County of Honolulu v. Toyama, 61 Haw. 156, 598 P.2d 168 (1979).

CHAPTER 1 - MANAGING DIRECTOR

Section 6-101. Managing Director –

1. There shall be a managing director who shall be appointed and may be removed by the mayor. The managing director shall be the principal management aide of the mayor. The managing director shall have had at least five years of such training and experience, either in public service or private business, as shall qualify the managing director to perform the executive duties of the managing director's office.
2. The position of the managing director shall be in the office of the mayor.
3. The salary of the managing director shall be established by ordinance. The salary of any incumbent shall be reduced only in the event that a general reduction in salaries of all city officers and employees is simultaneously effected.
4. Should the mayor fail to appoint a managing director within ninety days of the occurrence of any vacancy in the position, unless such period is extended by the council, the council shall make the appointment, but the power to remove the managing director shall nevertheless be vested in the mayor. *(Reso. 83-357)*

Section 6-102. Powers, Duties and Functions –

The managing director shall:

(a) Supervise the heads of all executive departments and agencies assigned to the managing director by Section 4-102 of this charter.
(b) Evaluate the management and performance of each executive agency, including the extent to which and the efficiency with which its operating and capital program and budget have been implemented, appoint the necessary staff to assist in such evaluation and analyses and to assist the executive agencies in improving their performance and make reports to the mayor on the findings and recommendations of such evaluation and analyses. A report also shall be made to the police commission when an evaluation and analysis is performed on the police department. A report also shall be made to the fire commission when an evaluation and analysis is performed on the fire department.
(c) Prescribe standards of administrative practice to be followed by all agencies under the managing director's supervision.
(d) Attend meetings of the council and of any board, commission or committee, when requested by the mayor.
(e) Attend meetings of the council and its committees upon request and make available such information as they may require.
(f) Perform all other duties required by this charter or assigned in writing by the mayor.

(Reso. 83-357 and 94-267)

Section 6-103. Department of Emergency Management –

There shall be a department of emergency management headed by a director of emergency management who shall be appointed and may be removed by the mayor in accordance with law. The director of emergency management shall:

(a) Develop, prepare and, under disaster or emergency situations, assist in the implementation of civil defense plans and programs to protect and promote the public health, safety and welfare of the people of the city.
(b) Coordinate the civil defense and emergency preparedness activities and functions of the city with those of the state and federal governments and other public or private organizations for civil defense within the state.

(1998 General Election Charter Amendment Question No. 3(III), section and subsequent sections renumbered; 2007 Reorganization)

Note

The position of civil defense administrator is a civil service position. Malcolm A. Sussel v. City and County of Honolulu, et al., U.S.D.C. Civil Nos. 86-1136 and 88-00375, judgments entered May 4 and May 8, 1989, affirmed by U.S.C.A. (9th Circuit) May 9, 1991; Sussel v. City and County of Honolulu Civil Service Commission, 71 Haw. 101, 784 P.2d 867 (1989); Sussel v. Civil Service Commission of the City and County of Honolulu, 74 Haw. 599, 851 P.2d 311 (1993).

Section 6-104. Citizens Advisory Commission on Civil Defense –

There shall be a citizens advisory commission on civil defense which shall consist of five members. The commission shall advise the mayor, the council, and the civil defense administrator on matters pertaining to civil defense, and to the promotion of community understanding and interest in such matters. The commission shall be governed by the provisions of Section 13-103 of this charter. *(Reso. 88-196)*

Section 6-105. Royal Hawaiian Band –

There shall be a Royal Hawaiian Band headed by a band director who shall be appointed and may be removed by the mayor. The band director shall perform such duties as may be required by law. *(Reso. 83-357 and 88-196)*

Section 6-106. Office of Housing –

There shall be an office of housing headed by an executive for housing who shall be appointed and may be removed by the mayor. The executive for housing shall have had a minimum of three years experience in the administration of affordable housing programs or projects or programs for low-income, homeless or special needs populations. The executive for housing shall:

(a) Oversee, coordinate and direct the development, preparation and implementation of plans and programs relating to affordable housing, senior housing, special needs housing, and homelessness, for the benefit of the people of the city.
(b) Oversee, coordinate and direct the activities and functions of the city relating to affordable housing, senior housing, homelessness, and special needs housing.
(c) Coordinate city activities and programs relating to affordable housing, senior housing, homelessness, and special needs housing with those of the state and federal governments and those of public or private housing organizations within the state. *(Reso. 11-47)*

CHAPTER 2 - DEPARTMENT OF BUDGET AND FISCAL SERVICES

Section 6-201. Organization –

There shall be a department of budget and fiscal services headed by a director of budget and fiscal services who shall be appointed and may be removed by the mayor. *(1998 General Election Charter Amendment Question No. 2(V))*

Section 6-202. Director of Budget and Fiscal Services, Qualifications –

The director of budget and fiscal services shall have had a minimum of five years of training and experience in a public or private financial position, at least three years of which shall have been in a responsible administrative capacity. *(1998 General Election Charter Amendment Question No. 2(V))*

Section 6-203. Powers, Duties and Functions –

The director of budget and fiscal services shall be the chief accounting officer of the city and shall:

(a) Prepare bills for the collection of moneys due the city or authorize the preparation thereof by other executive agencies of the city government under the director's general supervision.
(b) Collect and receive moneys due to or receivable by the city and issue receipts therefor or authorize other executive agencies to do so under conditions prescribed by the director of budget and fiscal services.
(c) Keep accurate and complete account of receipts and disbursements.
(d) Maintain the treasury and, with the approval of the mayor, deposit moneys belonging to the city in depositories authorized by law which fulfill all conditions prescribed for them by law.
(e) Contract for services of independent contractors, purchase materials, supplies and equipment and permit disbursements to be made only pursuant to rules and regulations

adopted under the terms of this charter.

(f) Have the responsibility for issuing, selling, paying interest on and redeeming bonds of the city.
(g) Prepare and issue warrants.
(h) Prepare payrolls and pension rolls.
(i) Be responsible for the management of city funds.
(j) Sell real property upon which improvement assessments are not paid within the period prescribed pursuant to policies established by the council, and dispose of personal property not needed by any agency of the city.
(k) Rent or lease city property, except property controlled by the board of water supply and the public transit authority, and award concessions, pursuant to law and to policies established by the council.
(l) Prepare and maintain a perpetual inventory of all lands owned, leased, rented or controlled by the city.
(m) Prepare and maintain a perpetual inventory of equipment owned or controlled by the city and materials and supplies.
(n) Review assessment rolls for assessable public improvements prior to approval by the council and issue bills therefor after such approval has been given.
(o) Have custody of all official bonds, except the bond of the budget and fiscal services director, which shall be in the custody of the mayor.
(p) Review the manner in which public funds are received and expended and report to the mayor on the integrity with which said funds are accounted for and on the financial responsibility of officers and employees administering said funds.
(q) Provide information pertaining to the financial affairs of the city and make financial reports at least quarterly to the mayor and the council.
(r) Prepare the operating and capital program and budget and necessary budget ordinances and amendments or supplements thereto under the direction of the mayor.
(s) Review the operating and capital budget program schedules of each executive agency and make budgetary allotments for their accomplishment with the approval of the mayor.
(t) Review all executive agency requests for the creation of new positions.

(Reso. 83-357, 90-295 and 95-205; 1998 General Election Charter Amendment Question No. 2 (V); Reso. 09-252 and 10-110)

Note

The word "policy," as used in the charter to describe council powers means a determination much broader than an ad hoc command to take specific action with regard to a particular piece of property, and has reference to requirements set up by the council to serve and protect the public interest which are generally applicable to the leasing or renting of any city and county property, or the awarding of concessions thereon. City Council of the City and County of Honolulu v. Fasi, 52 Haw. 3, 467 P.2d 576 (1970).

Section 6-204. Cash Count --

The director of budget and fiscal services, or a designated assistant, and a person designated by the council shall jointly, at least once in every three months and at such other times as may be deemed necessary, verify the amount of money in the treasury and make a certified report showing:

(a) The amount of money that ought to be in the treasury.
(b) The amount and kind of money actually therein.

A signed copy of such a report shall be filed with the mayor and the council, and another signed copy shall be posted in the department of budget and fiscal services for public view for at least one month from the date of such report. *(1998 General Election Charter Amendment Question No. 2(V))*

Section 6-205. Board of Trustees of the Police Officers, Fire Fighters and Bandmembers Pension Fund –

The organization and the duties and functions of the board of trustees of the police officers, fire fighters and bandmembers pension fund of the City and County of Honolulu shall be as provided by law, except that the board shall be attached to the department of budget and fiscal services and its director shall ex officio be the secretary and the treasurer of the board. *(Reso. 83-357; 1998 General Election Charter Amendment Question No. 2(V))*

Section 6-206. Pension Board –

The organization and the duties and functions of the pension board of the City and County of Honolulu shall be as provided by law, except that the board shall be attached to the department of budget and fiscal services and its director shall ex officio be the secretary and the treasurer of the board. *(Reso. 83-357; 1998 General Election Charter Amendment Question No. 2(V))*

Section 6-207. Liquor Commission –

The organization and the duties and functions of the liquor commission of the City and County of Honolulu shall be as provided by law, except that the commission shall be attached to the department of budget and fiscal services. The positions of liquor administrator and deputy liquor administrator shall be exempt from civil service in accordance with Section 6-1103.

The liquor commission shall appoint and may remove a liquor administrator, who shall serve as the administrative head of the commission staff and shall be subject to the policies and directions of the commission.

The liquor administrator may appoint and may remove a deputy liquor administrator who shall serve as the first deputy to the administrator.

The liquor administrator may hire and may remove other staff in accordance with applicable law. The salaries of the staff shall be set in accordance with applicable law. *(Reso. 83-357; 1998 General Election Charter Amendment Question No. 2(V); Reso. 09-357)*

CHAPTER 3 - DEPARTMENT OF COMMUNITY SERVICES

Section 6-301. Organization –

There shall be a department of community services which shall consist of a director of community services, who shall be appointed and may be removed by the mayor, and the necessary staff. *(Reso. 89-537, 95-80 and 95-139; 1998 Reorganization)*

Section 6-302. Powers, Duties and Functions –

The director of community services shall:

(a) Develop and administer projects, programs and plans of action for human resources, human services and housing programs.

(b) Develop and administer projects, programs and plans of action designed to achieve sound

community development, provided that such projects, programs and plans of action conform to and implement the general plan and development plans.

(c) Administer grants awarded from the grants in aid fund.

(d) Act as the local public officer for the purpose of implementing federally-aided and state-aided human resources, human services, housing, urban renewal and community development programs.

(Reso. 89-537 and 95-139; 1998 Reorganization; Reso. 10-38; Reso 11-47; Reso. 12-44)

CHAPTER 4 -
DEPARTMENT OF CUSTOMER SERVICES

Section 6-401. Organization –

There shall be a department of customer services headed by a director of customer services who shall be appointed and may be removed by the mayor. *(1998 General Election Charter Amendment Question No. 3(I))*

Section 6-402. Powers, Duties and Functions –

The director of customer services shall:

(a) Receive complaints and inquiries concerning city policies, programs and operations and promptly answer such complaints or inquiries.

(b) Fulfill the research and information needs of the city, coordinate a city government records management program, and supervise the city archive of documents and materials.

(c) Perform motor vehicle driver licensing, commercial driver's licensing, and licensing of businesses, bicycles, mopeds, and dogs.

(d) Conduct inspection of vehicles and reconstructed vehicles.

(e) Administer the motor vehicle registration program, the abandoned vehicle program, and the motor vehicle financial responsibility program.

(1998 General Election Charter Amendment Question No. 3(I))

CHAPTER 5 -
DEPARTMENT OF DESIGN AND CONSTRUCTION

Section 6-501. Organization –

There shall be a department of design and construction headed by a director of design and construction who shall be appointed and may be removed by the mayor. *(1998 Reorganization)*

Section 6-502. Director of Design and Construction, Qualifications –

The director of design and construction shall be a registered architect or a registered professional engineer and shall have had a minimum of five years of training and experience in an architectural or engineering position, at least three years of which shall have been in a responsible administrative capacity. *(1998 Reorganization)*

Section 6-503. Powers, Duties and Functions –

The director of design and construction shall:

(a) Direct and perform the planning, engineering, design, construction and improvement of public buildings.
(b) Direct and perform the planning, engineering, design and construction of public streets, roads, bridges and walkways, and drainage and flood improvements.
(c) In consultation with the respective departments, direct and perform the planning, engineering, design and construction of wastewater facilities, parks and recreational facilities, and transportation systems.

(1998 Reorganization)

CHAPTER 6 - DEPARTMENT OF EMERGENCY SERVICES

Section 6-601. Organization –

There shall be a department of emergency services headed by a director of emergency services who shall be appointed and may be removed by the mayor. *(1992 General Election Charter Amendment Question No. 16; 1998 Reorganization)*

Section 6-602. Director of Emergency Services, Qualifications –

The director of emergency services shall have a minimum of five years of training and experience in emergency medical services, at least three years of which shall have been in a responsible administrative capacity. *(1992 General Election Charter Amendment Question No. 16; 1998 Reorganization)*

Section 6-603. Powers, Duties and Functions –

The director of emergency services shall:

(a) As to medical services:
  (1) Be the primary provider of emergency medical care;
  (2) Develop programs and provide training and educationalprograms related to emergency medical services and injury prevention;
  (3) Be responsible for medical matters relating to public health and welfare.
  (4) Be responsible for the administration of the city's health services programs and medical evaluations of current and prospective city employees.
(b) As to ocean safety:
  (1) Be the primary responder to emergencies arising on the beach and in the near shore waters;
  (2) Be responsible for ocean safety training, educational, and risk reduction programs relating to ocean safety.
(c) Perform such duties as may be required by law.

(1992 General Election Charter Amendment Question No. 16; 1998 Reorganization; 2006 General Election Charter Amendment Question No. 10; Reorganization 2007; Reorganization 2012)

CHAPTER 7 -
DEPARTMENT OF ENTERPRISE SERVICES

Section 6-701. Organization –

There shall be a department of enterprise services headed by a director of enterprise services who shall be appointed and may be removed by the mayor. *(1998 Reorganization)*

Section 6-702. Powers, Duties and Functions –

The director of enterprise services shall:

(a) Operate and maintain the Neal S. Blaisdell Center and any other auditorium or cultural or entertainment facilities assigned to the department.

(b) Perform such other duties as may be required by law.

(Reso. 83-357; 1998 Reorganization)

CHAPTER 8 -
DEPARTMENT OF ENVIRONMENTAL SERVICES

Section 6-801. Organization –

There shall be a department of environmental services headed by a registered engineer who shall have a background in sanitary engineering and who shall be appointed and may be removed by the mayor. *(1992 General Election Charter Amendment Question No. 6; 1998 Reorganization)*

Section 6-802. Environmental Services Director, Qualifications –

The director of the department of environmental services shall have a minimum of five years of engineering experience, three of which shall have been in sanitary engineering, and three years of administrative experience. The administrative experience does not have to be directly related to sanitary engineering. *(1992 General Election Charter Amendment Question No. 6; 1998 Reorganization)*

Section 6-803. Powers, Duties and Functions –

The director of the department of environmental services shall:

(a) Advise the director of design and construction concerning the planning and design of wastewater facilities.

(b) Oversee the operation and maintenance of sewer lines, treatment plants and pumping stations.

(c) Monitor the collection, treatment and disposal of wastewater.

(d) Provide chemical treatment and pumping of defective cesspools.

(e) Develop and administer solid waste collection, processing and disposal systems including a comprehensive curbside recycling system.

(f) Promulgate rules and regulations as necessary to administer and enforce requirements established by law.

(g) Perform such other duties as may be required by law.

(1992 General Election Charter Amendment Question No. 6; 1998 Reorganization; 2006 General Election Charter Amendment Question No. 4)

CHAPTER 9 -
DEPARTMENT OF FACILITY MAINTENANCE

Section 6-901. Organization –

There shall be a department of facility maintenance headed by a chief engineer who shall be appointed and may be removed by the mayor. *(1998 Reorganization)*

Section 6-902. Chief Engineer, Qualifications –

The chief engineer shall be a registered professional engineer and shall have had a minimum of five years of training and experience in an engineering position, at least three years of which shall have been in a responsible administrative capacity.

Section 6-903. Powers, Duties and Functions –

The chief engineer shall:

(a) Maintain public buildings and their adjoining parking facilities, except as otherwise provided by law.
(b) Maintain public streets, roads, bridges, traffic medians, triangles, circles, other traffic calming appurtenances and walkways, and drainage and flood control systems.
(c) Install and maintain street lighting systems.
(d) Maintain, oversee and monitor drainage and flood control systems, administer city storm water permits, programs and management plans, and enforce city ordinances and rules relating to storm water quality.
(e) Perform such other duties as may be required by law.

(1992 General Election Charter Amendment Question No. 6; 1998 Reorganization; 2007 Reorganization; Reso. 15-10, CD1)

CHAPTER 10 -
FIRE DEPARTMENT

Section 6-1001. Organization –

There shall be a fire department which shall consist of a fire chief, a fire commission, and the necessary staff. The fire chief shall be the administrative head of the fire department. *(Reso. 94-267)*

Section 6-1002. Statement of Policy –

It is hereby declared to be the purpose of this chapter of the charter to establish in the city a system of fire protection and prevention and emergency rescue which shall be based on qualified and professional leadership and personnel. In order to achieve this purpose, the fire department shall be conducted in accordance with the following:

(a) Standards for recruitment shall be designed to attract into the department persons with high degrees of education, intelligence, and personal stability.
(b) Promotions and other personnel actions shall be based upon fair and appropriate standards of merit, ability, and work performance.

(c) Appropriate training shall be provided to the maximum extent possible and practicable. *(Reso. 94-267)*

Section 6-1003. Fire Chief, Qualifications –

The fire chief shall be appointed by the fire commission. The chief may be removed by the fire commission only after being given a written statement of the charges and a hearing before the commission. The chief shall have had a minimum of five years of training and experience in a fire department, at least three years of which shall have been in a responsible administrative capacity. *(Reso. 94-267, section and subsequent sections renumbered)*

Section 6-1004. Powers, Duties and Functions –

The fire chief shall:

(a) Perform fire fighting and rescue work in order to save lives, property and the environment from fires.
(b) Respond to emergencies arising on hazardous terrain and on the sea and hazardous material incidents.
(c) Provide emergency medical care.
(d) Train, equip, maintain and supervise a force of fire fighting and rescue personnel.
(e) Monitor the construction and occupancy standards of buildings for the purposes of fire prevention.
(f) Provide educational programs related to fire prevention.
(g) Appoint the deputy fire chief and the private secretaries to the fire chief and the deputy fire chief.
(h) Perform such other duties as may be required by law.

(Reso. 94-267; 2006 General Election Charter Amendment Question No. 10)

Section 6-1005. Fire Commission –

There shall be a fire commission which shall consist of five members. The commission may appoint such staff and engage consultants as necessary for the performance of its duties. The commission shall be governed by the provisions of Section 13-103 of this charter. *(Reso. 94-267)*

Section 6-1006. Powers, Duties and Functions –

The fire commission shall:

(a) Adopt rules necessary for the conduct of its business and review rules for the administration of the department.
(b) Review the annual budget prepared by the fire chief and make recommendations thereon to the mayor and the council.
(c) Review the department's operations, as deemed necessary, for the purpose of recommending improvements to the fire chief.
(d) Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.
(e) Review personnel actions within the department for conformance with the policies under Section 6-1002 of this charter.
(f) Hear complaints of citizens concerning the department or its personnel and, if deemed necessary, make recommendations to the fire chief on appropriate corrective actions.
(g) Submit an annual report to the mayor and the council on its activities.

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. *(Reso. 94-267; 1998 Reorganization)*

Section 6-1007. Suspension; Removal; Appeals –

1. Suspension or removal of any officer or employee shall be made pursuant to law and the rules of the department.
2. Appeals from personnel actions shall be in accordance with Section 6-1108 of this charter.

(Reso. 94-267; 1998 Reorganization)

CHAPTER 11 - DEPARTMENT OF HUMAN RESOURCES

Section 6-1101. Organization –

There shall be a department of human resources which shall consist of a director of human resources, a civil service commission and the necessary staff. The director of human resources shall be the administrative head of the department of human resources. *(1992 General Election Charter Amendment Question No. 26; 1998 Reorganization)*

Section 6-1102. Statement of Policy –

It is hereby declared to be the purpose of this chapter of the charter to establish in the city a system of personnel administration based on merit principles and generally accepted methods governing the classification of positions and the employment, conduct, movement and separation of public officers and employees.

It is also declared to be the purpose of this chapter of the charter to build a career service which will attract, select and retain, on a merit basis, the best qualified civil servants who shall hold their offices or positions, free from coercive political influences, with incentives in the form of genuine opportunities for promotions in order that they may provide competent and impartial service to the public according to the dictates of ethics and morality. In order to achieve these purposes, it is the declared policy of the city that the personnel system hereby established be applied and administered in accordance with the following merit principles:

(a) Equal opportunity for all regardless of age, race, sex, religion or politics.
(b) Impartial selection of the ablest person for government service by means of competitive tests which are fair.
(c) Just opportunity for competent employees to be promoted within the service.
(d) Reasonable job security for the competent employee, including the right of appeal from personnel actions.
(e) Systematic classification of all positions through adequate job evaluation.
(f) Proper balance in employer-employee relations between the people, as the employer, and employees, as individual citizens, to achieve a well trained and productive working force.

(1992 General Election Charter Amendment Question No. 32D)

Note

The City and County of Honolulu does not appear subject to Hawaii Revised Statutes Chapter 76 (Civil Service Law). Gibb v. Spiker, 68 Haw. 432, 718 P.2d 1076 (1986).

Section 6-1103. Civil Service and Executive Branch Exemptions –

The provisions of this chapter of the charter shall apply to all positions in the service of the executive branch. This section shall apply to semi-autonomous agencies as though they are departments of the executive branch. The following positions shall be exempt from the provisions of this chapter of the charter:

(a) Positions of officers elected by public vote; positions of heads of departments; the position of the band director of the Royal Hawaiian Band; the position of the executive for housing; the position of the manager and chief engineer of the board of water supply and the manager of any semi-autonomous agency created by ordinance.

(b) Positions in the office of the mayor, but such positions shall be included in the position classification plan. Employees of the civil defense agency and Royal Hawaiian Band, other than the band director, shall not be exempted from civil service.

(c) Positions of deputies of the corporation counsel, deputies and administrative or executive assistants of the prosecuting attorney and law clerks.

(d) Positions of members of any board, commission or equivalent body.

(e) Positions of a temporary nature filled by students.

(f) Personal services obtained by contract where the director has certified that the service is special or unique, is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform such service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year.

(g) Personal services of a temporary nature needed in the public interest where the need for the same does not exceed one year, but before any person may be employed to render such temporary service, the director of human resources shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable.

(h) Personal services performed on a fee, contract or piecework basis by persons who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the city and when such fact is certified to by the director of human resources.

(i) Positions of one first deputy; and for the Honolulu Police Department one additional deputy; private secretaries to heads of departments and their deputies and to the executive for housing; and the position of managing director, one first deputy and private secretaries to each; but private secretarial positions shall be included in the position classification plan. The first deputy in the department of human resources, however, shall not be exempt from civil service.

(j) Positions or personal services in demonstration programs and joint participation and special projects which serve the community; provided that such exemptions are required by federal law or rules and regulations and then in accordance with procedures established by ordinance.

(k) The following positions of the public transit authority:

  (1) The executive director, deputy director(s), private secretaries to the executive director and deputy director(s); and

  (2) Positions certified by the director of human resources that require specialized knowledge and experience in fixed guideway system planning, development, operations, maintenance, and management, or transit-oriented development; provided

that, except for private secretarial positions, such positions shall not be included in the position classification plan and salaries for such positions shall be set by the public transit authority.

(l) Positions in the liquor commission of the liquor administrator and the deputy liquor administrator, but such positions shall be included in the position classification plan.

The director of human resources shall determine the applicability of this section of the charter to specific employment or services in the executive branch.

(Reso. 90-295; 1992 General Election Charter Amendment Question Nos. 12, 21, 16 and 32C; Reso. 94-67 and 95-205; 1998 General Election Charter Amendment Question No. 3 (VI) and (VII); 1998 Reorganization; Reso. 09-252, 09-357 and 10-38; Reso 11-47)

Section 6-1104. Civil Service and Legislative Branch Exemptions –

The provisions of this chapter of the charter shall apply to all positions in the service of the legislative branch and shall embrace all personal services performed for the legislative branch, except the following:

(a) Positions of officers elected by public vote or appointed to office as provided in subsection 3-105(a) of this charter.

(b) The position of city clerk.

(c) Positions in the office of council services.

(d) Positions of the first deputy and the private secretaries to the city clerk and the first deputy, but private secretarial positions shall be included in the position classification plan.

(e) Positions of temporary election clerks employed during election periods, but such positions shall be included in the position classification plan.

(f) Positions and services described by subsections (e), (f), (g) and (h) of Section 6-1103 of this charter, provided, however, that no certification by the director of human resources or approval by the civil service commission shall be required.

(g) Positions in the office of the city auditor, including positions on the audit committee which may be established by the council.

(1992 General Election Charter Amendment Question Nos. 26 and 32C; 1998 Reorganization; Reso. 02-39)

Section 6-1105. Director of Human Resources –

1. Appointment and Removal; Qualifications. The director of human resources shall be appointed and may be removed by the mayor only for cause after being given a written statement of the charges and a hearing before the council thereon, if the director of human resources so requests. The director of human resources shall have had a minimum of five years of training and experience in personnel administration, either in public service or private business or both, at least three years of which shall have been in a responsible administrative capacity, and shall be in sympathy with the principles of the merit system.

2. Powers, Duties and Functions. The director of human resources shall be responsible for the proper conduct of all administrative affairs of the department and for the execution of the personnel program prescribed in this charter and in the ordinances and rules and regulations authorized by this charter. *(Reso. 83-357; 1992 General Election Charter Amendment Question No. 26; 1998 Reorganization)*

Section 6-1106. Appointments and Promotions in Civil Service –

Appointments and promotions in the civil service shall be made only after certification by the director under a general system based upon merit, efficiency and fitness as ascertained by examinations which, so far as practicable, shall be competitive, and all positions in the civil service shall be filled from those eligible under such certification. In case of persons employed to perform manual labor for which no special skill is required, original entrance examination may be waived by the director.

Section 6-1107. Classifications –

Class titles shall be used to designate positions in all official records, documents, vouchers and communications, and no person shall be appointed to or employed in a position in the civil service under any title which has not been approved by the director.

Section 6-1108. Appeals –

1. Any person aggrieved by any action of the director of human resources or who has been suspended, demoted or dismissed may appeal to the civil service commission for redress, pursuant to its rules and regulations.
2. If the civil service commission, after a hearing, orders a demoted, dismissed or suspended employee reinstated, it may reinstate such employee under such conditions as it deems proper. *(1992 General Election Charter Amendment Question No. 26; 1998 Reorganization)*

Section 6-1109. Position Classification Plan; Compensation –

Except as provided by Sections 6-1103 and 6-1104 of this charter, all positions in the service of the city shall be classified within a position classification plan, and all persons holding such positions shall be compensated as provided by law. *(1998 Reorganization)*

Section 6-1110. Civil Service Commission –

1. Membership. The civil service commission shall consist of five members who shall believe in the principles of the merit system in public employment. Of the members appointed, one shall be selected from among persons employed in private industry in either skilled or unskilled laboring positions as distinguished from executive or professional positions. Not more than three members of the commission shall belong to the same political party. The commission shall be governed by the provisions of Section 13-103 of this charter.
2. Powers, Duties and Functions. The civil service commission shall:
   (a) Advise the mayor and the director of human resources on problems concerning personnel administration.
   (b) Advise and assist the director in fostering the interest of institutions of learning and of civic, professional and employee organizations in the improvement of personnel standards.
   (c) Make any investigation which it may consider desirable concerning personnel administration and report to the mayor, at least once a year, its findings, conclusions and recommendations. The commission may appoint a master and invest the master with power to conduct such investigations and report thereon to the commission.
   (d) Hear appeals. The commission may appoint a master and invest the master with power to hear such appeals and report thereon to the commission.
   (e) Prescribe rules and regulations to carry out the provisions of this chapter of the charter.

3. Interference with Administrative Affairs. Except for purposes of inquiry, neither the civil service commission nor its members shall interfere in any way with the administrative affairs of the department. *(Reso. 83-357; 1992 General Election Charter Amendment Question No. 26; 1998 Reorganization)*

Section 6-1111. Adoption and Content of Regulations –

1. Adoption. The director of human resources shall prepare and recommend to the civil service commission reasonable rules and regulations to carry out the provisions of this chapter of the charter. Upon adoption by the commission and approval by the mayor, such rules and regulations shall have the force and effect of law.

2. Content. The rules and regulations shall:

(a) Regulate appointments, promotions, removals and other personnel matters.

(b) Contain uniform provisions covering the method and manner of conducting examinations; on the job training programs; a uniform performance evaluation system, including the manner in which ratings are to be used in promotions, salary increases, suspensions and separations; and position classifications.

(c) Provide procedures for original appointment or temporary appointment, promotion, transfer, the filling of vacancies, leaves of absence, lay-offs, suspension, demotion, separation, reinstatement and re-employment.

(d) Provide for the establishment, maintenance, consolidation, cancellation and extension of eligible lists and the removal of names therefrom.

(e) Provide for the establishment of desirable standards of training, experience and other qualifications of applicants.

(f) Establish work test periods of not less than six nor more than twelve months before appointees acquire permanent civil service status.

(g) Establish procedures for grievance proceedings.

(h) Fix the procedure and the time within which appeals must be taken and heard.

(i) Establish the method of certification of eligibles for appointment or promotion. The appointing authorities shall be entitled to the certification of not less than five eligibles for each vacancy. If more than one vacancy is to be filled, an additional eligible shall be certified for each additional vacancy. Special and different rules and regulations may be established for unskilled labor lists, re-employment lists, reinstatements and procedures for emergency, provisional or temporary appointments or appointments for a limited period where status in the civil service is not obtained and certification is not required.

(j) Provide the extent to which preference shall be given in appointments and promotions to persons honorably discharged or discharged under honorable conditions from the armed forces; to the unremarried spouses of such deceased persons; and to disabled veterans or to their spouses when the veterans are unable to work. Such preference shall be given only to persons who have met the minimum requirements imposed for each test and have received at least the rating required for eligibility.

(k) Prescribe the conditions pursuant to which transfer of employees between the city and the state and other political subdivisions may be made.

(Reso. 83-357; 1992 General Election Charter Amendment Question No. 26; 1998 Reorganization)

Section 6-1112. Prohibitions –

1. Discriminatory Practices. No person holding any position in the civil service shall be favored or discriminated against on the grounds of age, race, sex, religion or politics.

2. Political Activities.
   (a) No person in the civil service shall (1) use official authority or influence for the purpose of interfering with an election or affecting the result thereof; (2) use official authority or influence to coerce the political action of any person or party; (3) be obliged to contribute to any political fund or to render any political service, nor shall such person be removed or otherwise prejudiced for refusing to do so; (4) solicit or receive any political contribution from any officer or employee or from any person in any city building or from any person receiving any benefit under any law of the State appropriating funds for relief or public assistance; or (5) discriminate in favor of or against any officer or employee on account of any political contribution.
   (b) The foregoing prohibited activities shall not be deemed to preclude the right of any person in the civil service to vote and to express opinions as such person chooses on all political subjects and candidates or to be a member of any political party, organization or club. Any person in the civil service may make voluntary contributions to a political organization for its general expenditures. "Contribution" includes a gift, subscription, loan, advance or deposit of money or anything of value and includes a contract, promise or agreement, whether or not legally enforceable, to make a contribution.
3. Other Prohibited Activities.
   (a) No recommendation of any person who applies for examination or appointment to any office or position under the provisions of this chapter of the charter which may be given by an elected officer of the city, except as to the ability or character of the applicant, shall be received or considered by any person concerned in the giving of any examination or the making of any appointment under this chapter of the charter.
   (b) It shall be unlawful for any candidate for election to any public office or for any public officer or employee, any portion of whose compensation is paid by the city directly or indirectly, to solicit or assess any contribution or assessment for any political purpose whatever from any member in the civil service.
   (c) No person shall, in any room or building occupied in the discharge of official duties by any officer or employee, solicit in any manner whatever or receive any contribution of money or other things of value from any officer or employee for any political purpose whatever.
   (d) No officer or employee shall discharge, promote or demote or, in any manner, change the status or compensation of any other officer or employee or promise or threaten so to do for giving or withholding or neglecting to make any contribution of money or other things of value for any political purpose whatever.
   (e) No officer or employee shall directly or indirectly hand over to any other officer or employee any money or other things of value on account of or to be applied to the promotion of any political object whatever.
   (f) No officer or employee shall discharge, promote or demote or, in any manner, change the status or compensation of any other officer or employee or promise or threaten so to do because of the political or religious actions or beliefs of such other officer or employee or for the failure of such other officer or employee to take any political action for any political purpose whatever or to advocate or fail to advocate the candidacy of any person seeking an elective office.
   (g) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provision of this chapter of the charter nor commit or attempt to commit any fraud preventing the impartial execution of

any provision of this chapter of the charter and of the rules and regulations adopted hereunder.

(h) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other thing of value to obtain any appointment, proposed appointment, promotion or proposed promotion to or obtain any advantage in, a position in the civil service.

4. Certification of Payrolls.
   (a) No disbursing or certifying officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the civil service or otherwise employed under the provisions of this chapter of the charter unless payroll certification has been made by the director or the director's authorized agent that the person named therein has been appointed and employed in accordance with the provisions of this chapter of the charter and the rules and regulations adopted thereunder. The director may, for proper cause, withhold payroll certification for any position or positions in the civil service or for any other position where the director's certification is required under the provisions of this chapter of the charter.
   (b) If the director of human resources wrongfully withholds payroll certification for a position in the city service held by any employee, such employee may maintain a proceeding in the courts to compel the director to certify such payroll.
5. Wrongful Payments.
   (a) Any citizen may maintain a suit to restrain a disbursing officer from making any payments of any salary or compensation to any person whose appointment or employment has not been made in accordance with this chapter of the charter and the rules and regulations in force thereunder. Any sum paid contrary to the provisions of this chapter of the charter and the rules and regulations established thereunder may be recovered in an action maintained by any citizen from any officer who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment or from the sureties on the official bond of any such officer. The citizen bringing the action shall be entitled to the costs of suit, including a reasonable attorney's fee from any money recovered in such action. The balance of any sums recovered shall be paid into the city's treasury.
   (b) Any person who is appointed or is employed in contravention of any provision of this chapter of the charter or of the rules and regulations thereunder and who performs service for which such person is not paid may maintain an action against the officer or officers who purported so to appoint or employ such person to recover the agreed pay for such services or the reasonable value thereof, if no pay is agreed upon. No officer shall be reimbursed at any time by the city for any sum paid to such person on account of such services.
6. Restrictions on Appointment and Promotion of Relatives.
   (a) No public officer shall advocate one of his or her relatives for appointment or promotion to a position in the same agency or in an agency over which he or she exercises jurisdiction or control.
   (b) No public officer shall appoint or promote within the agency to which he or she has been assigned or within an agency over which such officer exercises jurisdiction or control:
      (1) one of his or her relatives; or

(2) one of the relatives of either a second public officer of his or her agency or a second public officer who exercises jurisdiction over his or her agency, if the second public officer has advocated the appointment or promotion of that officer's relative.

(c) This subsection shall not prohibit a public officer from appointing or promoting a relative to a position if the relative is on the applicable eligible list submitted by the director of human resources in accordance with the civil service charter provisions, laws, and rules.

(d) As used in this paragraph:

(1) A public officer is deemed to "advocate the appointment or promotion of a relative" if the public officer recommends or refers the officer's relative for appointment or promotion by another officer standing lower in the chain of command. "Chain of command" means the line of supervisory personnel that runs through the involved public officers to the head of the relevant agency.

(2) "Agency" means the same as defined under Section 13-101 of this charter, the council, and any council office.

(3) "Appointment" means the selection of a person to fill a position or the hiring of a person to provide a personal service.

(4) "Public officer" means an employee or officer as defined under Section 13-101 of this charter.

(5) "Relative" of a public officer means a person who is related to the officer as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(Reso. 83-357; General Election Charter Amendment Question No. 26; Reso. 95-244; 1998 Reorganization)

CHAPTER 12 - DEPARTMENT OF INFORMATION TECHNOLOGY

Section 6-1201. Organization –

There shall be a department of information technology headed by a director of information technology who shall be appointed and may be removed by the mayor. *(1998 Reorganization)*

Section 6-1202. Powers, Duties and Functions –

The director of information technology shall:

(a) Operate and maintain information technology and telecommunications systems for the city government, excluding those systems maintained by the board of water supply and any other semi-autonomous agencies created by ordinance.

(b) Provide technical expertise and support in information technology and telecommunication technology to the city government.

(c) Assist the managing director in information technology and telecommunication technology analyses and evaluation.

(d) Advise the mayor on information technology and telecommunication technology matters.

(e) Perform such other duties as may be required by law.

(Reso. 90-295 and 95-205; 1998 Reorganization; 2006 General Election Charter Amendment Question No. 12(a))

CHAPTER 13 -
DEPARTMENT OF THE MEDICAL EXAMINER

Section 6-1301. Organization –

There shall be a department of the medical examiner headed by a medical examiner who shall be appointed by the mayor. The medical examiner may be removed only for cause after being given a written statement of the charges and a hearing before the council. *(Reso. 83-357)*

Section 6-1302. Medical Examiner, Qualifications –

The medical examiner and any deputy medical examiner shall be pathologists and licensed physicians and shall possess such additional licenses and certifications as state law may from time to time prescribe as qualifications for the performance of autopsies. *(1992 General Election Charter Amendment Question No. 16)*

Section 6-1303. Powers, Duties and Functions –

The medical examiner shall:

(a) Perform medical investigation services to establish the cause of any unattended death in the city in order to protect the rights of individuals and contribute legal evidence to the system of justice.

(b) Exercise the power vested in the coroner and coroner's physician of the city by law, where not in conflict with the provisions of this chapter of the charter.

(c) Perform such other duties as may be required by law.

Section 6-1304. Office Always Open –

The department of the medical examiner shall be kept open every day in the year, including Sundays and legal holidays.

Section 6-1305. Notification of Death –

When any person dies in the city as a result of violence or by a casualty or by apparent suicide or suddenly when in apparent health or when not under the care of a physician or when in jail or in prison or within twenty-four hours after admission to a hospital or in any suspicious or unusual manner, it shall be the duty of the person having knowledge of such death immediately to notify the department of the medical examiner and the police department.

Section 6-1306. Investigations by the Medical Examiner –

Immediately upon receipt of such notification, the medical examiner shall go to the body and take charge of it and shall make a full investigation concerning the medical cause of death. The medical examiner shall also take possession of all property of value found upon such person, make an exact inventory and surrender the property, except such items as are necessary to determine the cause of death, to the chief of police. All property, when no longer needed for medical or police purposes, shall be returned to the person entitled to its custody or possession. No person shall move the corpse or remains of any deceased person appearing to have come to death under any of the circumstances set forth in this chapter of the charter without the prior approval of the medical examiner and the chief of police. *(Reso. 83-357)*

Section 6-1307. Autopsies –

If, in the opinion of either the medical examiner or the prosecuting attorney, an autopsy is necessary, the autopsy shall be performed by the medical examiner. A detailed description of the findings of such autopsy and the conclusions drawn therefrom shall be filed in the department of the medical examiner.

Section 6-1308. Records –

The medical examiner shall keep full and complete records of all deaths resulting under the circumstances set forth in this chapter of the charter and promptly deliver to the prosecuting attorney and the chief of police copies of all such records.

Section 6-1309. Oaths –

The medical examiner and any deputy medical examiner may administer oaths and affirmations, take affidavits and make examinations as to any matter within the jurisdiction of the department, but may not summon a jury of inquisition.

CHAPTER 14 - DEPARTMENT OF PARKS AND RECREATION

Section 6-1401. Organization –

There shall be a department of parks and recreation which shall consist of a director of parks and recreation, a board of parks and recreation and the necessary staff. The director of parks and recreation shall be the administrative head of the department of parks and recreation. *(Reso. 192 (1974))*

Section 6-1402. Director of Parks and Recreation –

The director of parks and recreation shall be appointed and may be removed by the mayor. The director of parks and recreation shall have had a minimum of five years of training and experience in a parks and recreation position or related fields, at least three years of which shall have been in a responsible administrative capacity. *(Reso. 192 (1974) and 83-357)*

Section 6-1403. Powers, Duties and Functions –

The director of parks and recreation shall:

(a) Advise the director of design and construction on the planning and design of the parks and recreational facilities of the city, and maintain and operate all such facilities.

(b) Develop and implement programs for cultural, recreational and other leisure-time activities for the people of the city, except as otherwise provided by law.

(c) Beautify the public parks, facilities and streets of the city, including, but not limited to, the planting, trimming and maintaining of all shade trees, hedges and shrubs on such city parks, facilities and streets except hedges and shrubs on traffic medians, triangles, circles, and other traffic calming appurtenances.

(d) Process permit applications to use city parks and recreational facilities for free or affordable child day care programs for consideration by the council pursuant to Section 3-123 of this charter, provided that the director finds that such use does not interfere with the public's use of the property for park and recreational purposes.

(Reso. 192 (1974) and 94-150; 1998 Reorganization; 2007 Reorganization)

Note

The director of parks and recreation, as opposed to the city council, has the power to decide whether or not a concession should be permitted on park property. *City Council v. Fasi, et al., 52 Haw. 3, 467 P.2d 576 (1970).*

Section 6-1404. Board of Parks and Recreation –

There shall be an advisory board of parks and recreation which shall consist of nine members. The board shall advise the mayor, the council and the director on matters relating to the recreational, cultural and entertainment activities and facilities of the city and on the beautification of such facilities and public streets of the city. The board shall be governed by the provisions of Section 13-103 of this charter. *(Reso. 192 (1974))*

CHAPTER 15 - DEPARTMENT OF PLANNING AND PERMITTING

Section 6-1501. Organization –

There shall be a department of planning and permitting which shall consist of a director of planning and permitting, a planning commission, a zoning board of appeals and the necessary staff. The director of planning and permitting shall be the administrative head of the department of planning and permitting. *(1998 General Election Charter Amendment Question No. 1(III))*

Section 6-1502. Director of Planning and Permitting –

The director of planning and permitting shall be appointed and may be removed by the mayor. The director of planning and permitting shall have had a minimum of five years of training and experience in a responsible planning position, at least three years of which shall have been in a responsible administrative capacity in charge of major land utilization activities. *(Reso. 83-357; 1998 General Election Charter Amendment Question No. 1(III))*

Section 6-1503. Powers, Duties and Functions –

The director of planning and permitting shall:

(a) Prepare a general plan and development plans, and revisions thereof, for the improvement and development of the city.

(b) Establish procedures for adopting and revising the general plan and development plans and amending state land use district boundaries. The director's procedures shall include provisions for the processing of any proposed revision to the general plan or development plans which is submitted with the prescribed level of supporting documentation, regardless of whether the proposal is supported by the director or the council. However, a proposal lacking such support shall be processed as an "unendorsed proposal" under the provisions of this chapter.

(c) Review the executive operating and capital program and budget for conformance to the purposes of the general and development plans and make a written report of findings to the council within thirty days after receipt of such program and budget.

(d) Prepare and submit to the council on at least a biennial basis a report on the condition of the city in terms of the general plan and development plans. In addition, the director shall

prepare and submit to the council an annual report on the current status of land use and other data pertaining to the development plans.

(e) Undertake studies and prepare plans for special planning areas and issues.

(f) Perform other functions that will promote comprehensive planning, public participation and an efficient planning process.

(g) Prepare zoning ordinances, maps and rules and regulations and any amendments thereto.

(h) Prepare the land subdivision code and rules and regulations and any amendments thereto.

(i) Establish procedures for the review of land utilization applications.

(j) Be charged with the administration and enforcement of the zoning, subdivision, park dedication, building and housing ordinances, and rules and regulations adopted thereunder, and any regulatory laws or ordinances which may be adopted to supplement or replace such ordinances.

(k) Review the following for conformance to city standards:

(1) Plans for wastewater facilities for other than city projects;

(2) Plans for construction, reconstruction, widening and maintenance of public streets and roads, including utilities, landscaping, street lighting, traffic control and related items;

(3) Plans for the construction, reconstruction and maintenance of bridges and walkways and drainage and flood control systems.

(1992 General Election Charter Amendment Question No. 5; 1998 General Election Charter Amendment Question No. 1(III); 1998 Reorganization)

Section 6-1504. Other Development Codes and Ordinances –

The administration of other ordinances regulating the utilization of land, including those relating to proposals designed to aid the supply of affordable housing, shall, to the extent practicable, be vested in this department. *(1998 General Election Charter Amendment Question No. 1(III); 1998 Reorganization)*

Section 6-1505. Planning Commission –

There shall be a planning commission which shall consist of nine members. The commission shall be governed by the provisions of Section 13-103 of this charter. The department of planning and permitting shall provide staff support to assist the commission in carrying out its duties. *(1998 General Election Charter Amendment Question No. 1(III))*

Section 6-1506. Powers, Duties and Functions –

The planning commission shall:

(a) Advise the mayor, council and the director of planning and permitting on matters concerning the planning programs.

(b) Hold public hearings and make recommendations on all proposals to adopt or amend the general plan, development plans, and zoning ordinances. The commission shall complete its review and transmit its recommendations through the mayor to the council for consideration and action in a timely manner.

(c) Perform such other related duties as may be necessary to fulfill its responsibilities under this charter or as may be assigned by the mayor or the council.

(1998 General Election Charter Amendment Question No. 1(III))

Section 6-1507. General and Development Plans –

The purposes of preparing a general plan and development plans are to recognize and anticipate the major problems and opportunities concerning the social, economic and environmental needs and future development of the city and to set forth a desired direction and patterns of future growth and development. The director shall prepare a general plan for the entire city and development plans for particular areas of the city. *(1998 General Election Charter Amendment Question No. 1(III))*

Section 6-1508. General Plan –

The general plan shall set forth the city's objectives and broad policies for the long-range development of the city. It shall contain statements of the general social, economic, environmental and design objectives to be achieved for the general welfare and prosperity of the people of the city and the most desirable population distribution and regional development pattern. *(1998 General Election Charter Amendment Question No. 1(III))*

Section 6-1509. Development Plans –

"Development plans" shall consist of conceptual schemes for implementing and accomplishing the development objectives and policies of the general plan within the city. A development plan shall include a map, statements of standards and principles with respect to land uses, statements of urban design principles and controls, and priorities as necessary to facilitate coordination of major development activities.

The development plans and maps (which shall not be detailed in the manner of zoning maps) shall describe the desired urban character and the significant natural, scenic and cultural resources for the several parts of the city to a degree which is sufficient to serve as a policy guide for more detailed zoning maps and regulations and public and private sector investment decisions. *(1998 General Election Charter Amendment Question No. 1(III))*

Section 6-1510. Preparation and Review of the General Plan and Development Plans –

1. The director shall prepare the general plan and development plans. In preparing such plans, the director shall consult with all agencies of the executive branch. The director, with the approval of the mayor, may assign any relevant study to any agency. Any agency may undertake the study of any matters relating to such plans which are within the scope of its duties. The director shall evaluate all such studies and other reports and information.

2. The people of the city living in an area likely to be affected by a development plan under preparation by the director shall be given a reasonable opportunity to present facts and arguments relative to the matters under study.

3. In preparing such plans, the director shall consult with persons responsible for the development activities of other governmental and private organizations operating within the city.

4. The director shall prepare a biennial report which reviews the condition of the city and the city's regulatory system and capital improvement program with respect to the policies and objectives of the general plan and guidelines and principles of the development plans. The report may recommend revisions to the general plan and development plans or changes to implementing regulatory or budgetary programs. The report shall be submitted to the council prior to the end of the first and third years of the mayor's term in office. In addition, the director shall undertake a comprehensive review of the general plan at least once every ten years. *(1998 General Election Charter Amendment Question No. 1(III))*

Notes

Under the charter of city and county, the chief planning officer and the planning commission serve dual function as administrative agency of executive branch and as part of legislative process. Kailua Community Council v. City and County of Honolulu, 60 Haw. 428, 591 P.2d 602 (1979).

Charter does not give city council carte blanche authority to engage independent contractual services in the interest of its legislative policy-making and investigative powers. Each branch of the government is expected to cooperate with the other. The executive branch is primarily responsible for initially proceeding to conduct in-depth studies relating to city planning. Only if that branch has been requested to do so by the legislative branch, and has failed to comply with the request, may the council commission such studies as an incidental exercise of its power to amend or revise an existing general plan or development plan. Akahane v. Fasi, 58 Haw. 74, 565 P.2d 552 (1977).

Enactment of and amendments to development plans constitute legislative actions of the City Council and as such are entitled to a presumption of validity. Lum Yip Kee, Ltd. v. City and County of Honolulu, 70 Haw. 179, 767 P.2d 815 (1989).

Section 6-1511. Adoption of the General Plan and Development Plans –

1. The council shall adopt the general plan or revisions thereof by resolution and development plans or amendments thereto by ordinance. Resolutions adopting or revising the general plan shall be laid over for at least two weeks after introduction. Such resolutions shall be advertised once in a daily newspaper of general circulation at least ten days before adoption by the council. Upon adoption, every such resolution shall be presented to the mayor, and the mayor may approve or disapprove it pursuant to applicable provisions governing the approval or disapproval of bills.

The general plan and all development plans shall be kept on file in the department of planning and permitting.

2. Any revision of or amendment to the general plan or any existing development plan may be proposed by the council and shall be processed in the same manner as if proposed by the director. Any such revision or amendment shall be referred to the director and the planning commission by resolution, which resolution shall be accompanied by supporting documentation sufficient to satisfy the director's usual requirements for the commencement of processing. If the planning commission disapproves the proposed revision or amendment or recommends a modification thereof, not accepted by the council, or fails to make its report within a period of either thirty days after the close of its public hearing or ninety days after its receipt by the commission, whichever occurs first, the council may nevertheless adopt such revision or amendment, but only by the affirmative vote of at least two-thirds of its entire membership.

Any revision of or amendment to the general plan or any existing development plan which has been processed as an "unendorsed proposal" shall, in the absence of an affirmative recommendation from the planning commission, require for its adoption the affirmative vote of at least two-thirds of the entire membership of the council.

3. Public improvement projects and subdivision and zoning ordinances shall be consistent with the development plan for that area, provided that development plan amendments and zoning map amendments may be processed concurrently. If any provision of the general plan or development plans places the receipt of federal funds in jeopardy, the council may, after a public hearing, set aside the general plan or development plans, but only to the extent necessary to resolve the conflict which jeopardizes federal funding.

4. No person shall construct, operate or maintain any street railway or bus or other motor vehicle common carrier line or transit system on any street or route within the city unless the location and extent thereof has been submitted to and approved by the director as being in conformity with the general plan and the development plan for that area. *(1998 General Election Charter Amendment Question No. 1(III))*

Notes

Charter does not give city council carte blanche authority to engage independent contractual services in the interest of its legislative policy-making and investigative powers. Each branch of the government is expected to cooperate with the other. The executive branch is primarily responsible for initially proceeding to conduct in-depth studies relating to city planning. Only if that branch has been requested to do so by the legislative branch, and has failed to comply with the request, may the council commission such studies as an incidental exercise of its power to amend or revise an existing general plan or development plan. Akahane v. Fasi, 58 Haw. 74, 565 P.2d 552 (1977).

Enactment of and amendments to development plans constitute legislative actions of the City Council and as such are entitled to a presumption of validity. Lum Yip Kee, Ltd. v. City and County of Honolulu, 70 Haw. 179, 767 P.2d 815 (1989).

State not required to conform with charter requirement that public improvements must implement an area's development plan when the public improvement in question is expansion of the University of Hawaii campus. Kunimoto v. Kawakami, 56 Haw. 582, 545 P.2d 684 (1976).

Section 6-1512. Public Hearings –

1. Revisions of or amendments to the general plan and any existing development plan or new general plan or new development plans proposed by the director or by the city council, and any unendorsed proposal, shall be referred to the planning commission for its review and recommendations. The planning commission shall hold public hearings prior to making its recommendations thereon. Its recommendations shall include written findings.
2. Prior to adopting any such revision or amendment or any new general plan or development plan, the council shall hold a public hearing thereon and, upon adoption, shall set forth its written findings of fact.
3. All public hearings held pursuant to this section of the charter shall afford interested persons a reasonable opportunity to be heard and may be held in the development plan area directly affected by the proposal. *(1998 General Election Charter Amendment Question No. 1(III))*

Section 6-1513. Council Proposals for Amendments to the Zoning Ordinances –

Any revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director. Any such revision or amendment shall be referred to the director and the planning commission by resolution, which resolution shall be accompanied by supporting documentation sufficient to satisfy the director's usual requirements for the commencement of processing. If the planning commission disapproves the proposed revision or amendment or recommends a modification thereof, not accepted by the council, or fails to make its report within a period of either thirty days after close of its public hearing or ninety days after its receipt by the commission, whichever occurs first, the council may nevertheless adopt such revision or amendment, but only by the affirmative vote of at least two-thirds of its entire membership. *(1992 General Election Charter Amendment Question No. 5, and*

subsequent sections renumbered; 1998 General Election Charter Amendment Question No. 1(III), section and subsequent sections renumbered)

Section 6-1514. Zoning Ordinances –

The council shall, after public hearings, enact zoning ordinances which shall contain the necessary provisions to carry out the purpose of the general plan and development plans. For purposes of this charter, the term "zoning ordinances" shall refer both to a codification of the standards listed below and/or described in state law and to ordinances designating and redesignating particular parcels of property in terms of that codification.

In enacting the ordinances, the council shall take into consideration the character of the several parts of the city and their peculiar suitability for particular uses and types of development with a view to encouraging the most appropriate use of land throughout the city. The ordinances shall contain reasonable standards with respect to the location, bulk, size and permitted densities of buildings and other structures, the area of yards and other open spaces, off-street parking and loading spaces, and the use of buildings and lots. *(1992 General Election Charter Amendment Question No. 5; 1998 General Election Charter Amendment Question No. 1(III))*

Notes

The Charter contemplates and authorizes changes in a proposed ordinance amendment between the original proposal as presented at the public hearing and as finally adopted. To require another hearing whenever there is any revision of the text after full hearing is too formidable a burden. However, an amendment to a zoning ordinance will be held invalid where, as finally adopted, it contains alterations so substantially different from changes proposed in notice as to amount to a new proposal. Carlsmith, Carlsmith, Wichman and Case v. CPB Properties, Inc., 64 Haw. 584, 645 P.2d 873 (1982).

Interim development control ordinance is not a zoning ordinance, but a moratorium on the issuance of building permits. Life of the Land, Inc. v. City Council of the City and County of Honolulu, 61 Haw. 390, 606 P.2d 866 (1980).

Section 6-1515. Subdivision and Consolidation of Land –

1. Subdivision Ordinance. The council shall, after public hearings, enact an ordinance governing the subdivision or consolidation of land pursuant to which subdivision rules and regulations shall be promulgated.

2. Approval of Subdivisions. After the enactment of the ordinance governing subdivisions or consolidations of land, no land may be subdivided unless the proposed subdivision plans are in conformity with the subdivision ordinance and rules and regulations and have been approved by the director.

3. Rules and Regulations of the Board of Water Supply. The rules and regulations of the board of water supply shall govern the extent to which water systems and all necessary appurtenances shall be installed to and within subdivisions. *(1992 General Election Charter Amendment Question No. 5; 1998 General Election Charter Amendment Question No. 1(III))*

Note

Land Court may not approve an application for subdivision or consolidation unless an applicant has first complied with City Charter and ordinance provisions regarding the subdivision and consolidation of land. In Re Campbell Estate, 66 Haw. 354, 662 P.2d 206 (1983).

Section 6-1516. Zoning Board of Appeals –

There shall be a zoning board of appeals which shall consist of five members. The board shall be governed by the provisions of Section 13-103 of this charter. The zoning board of appeals shall hear and determine appeals from the actions of the director in the administration of the zoning ordinances, including variances therefrom, subdivision ordinances and any rules and regulations adopted pursuant to either. An appeal shall be sustained only if the board finds that the director's action was based on an erroneous finding of a material fact, or that the director had acted in an arbitrary or capricious manner or had manifestly abused discretion. *(1992 General Election Charter Amendment Question No. 5; 1998 General Election Charter Amendment Question No. 1(III))*

Notes

Agency review boards are often authorized to conduct their own evidentiary hearings. Administrative agencies may hear and determine facts, and decide the application of law to the ascertained facts. The receipt of oral and documentary evidence, as well as the cross-examination of witnesses, is appropriate at zoning board of appeals hearings. Price v. Zoning Board of Appeals of the City and County of Honolulu, 77 Hawai'i 168, 883 P.2d 629 (1994).

Zoning board of appeals review is limited to zoning and subdivision matters only. Swire Properties (Hawaii), Ltd. v. Zoning Board of Appeals of the City and County of Honolulu, 73 Haw. 1, 826 P.2d 876 (1992).

Zoning board of appeals may not issue cease and desist orders for violations of the Land Use Ordinance, but is restricted to either sustaining or denying appeals from orders issued by the director. Windward Marine Resort, Inc. v. Sullivan, 86 Hawai'i 171, 948 P.2d 592 (1997).]

Section 6-1517. Zoning Variances –

The director shall hear and determine petitions for varying the application of the zoning code with respect to a specific parcel of land and may grant such a variance upon the ground of unnecessary hardship if the record shows that (1) the applicant would be deprived of the reasonable use of such land or building if the provisions of the zoning code were strictly applicable; (2) the request of the applicant is due to unique circumstances and not the general conditions in the neighborhood, so that the reasonableness of the neighborhood zoning is not drawn into question; and (3) the request, if approved, will not alter the essential character of the neighborhood nor be contrary to the intent and purpose of the zoning ordinance. Prior to the granting of any variance, the director shall hold a public hearing thereon. The director shall specify the particular evidence which supports the granting of a variance. *(Reso. 83-357; 1992 General Election Charter Amendment Question No. 5; 1998 General Election Charter Amendment Question No. 1(III))*

Note

"Reasonable use" within the meaning of the charter is not the use most desired by the property owner; property owner must show inability to make any reasonable use of his land without the variance. "Unique circumstances" has to do with whether specific attributes of the parcel are present that justify the request for a variance. Korean Buddhist Dae Won Sa Temple of Hawaii, Inc. v. Zoning Board of Appeals of City and County of Honolulu, 87 Hawai'i 217, 953 P.2d 1315 (1998).

CHAPTER 16 -
POLICE DEPARTMENT

Section 6-1601. Organization –

There shall be a police department which shall consist of a chief of police, a police commission and the necessary staff. The chief of police shall be the administrative head of the police department.

Section 6-1602. Statement of Policy –

It is hereby declared to be the purpose of this chapter of the charter to establish in the city a system of law enforcement which shall be based on due regard for the constitutional rights of all persons, which shall promote the highest possible degree of mutual respect between law enforcement officers and the people of the city and which shall provide for the expeditious apprehension of those who violate the law. In order that these purposes may be achieved, the police department shall be conducted in accordance with the following:

(a) Standards of recruitment shall be designed to attract into the service persons with high degrees of education, intelligence and personal stability.
(b) Promotions shall be based upon fair standards of merit and ability which shall include peacekeeping and law enforcement criteria.
(c) Grievance procedures for the people and police officers of the city shall be based on due regard for their constitutional rights.

Section 6-1603. Chief of Police –

1. The chief of police shall be appointed by the police commission for a term of five years. The chief shall have had a minimum of five years of training and experience in law enforcement work, at least three years of which shall have been in a responsible administrative capacity. The chief shall not serve beyond the expiration of a term unless appointed again by the police commission. If desiring to do so, the police commission may appoint an incumbent chief to a new term without first engaging in an applicant solicitation and selection process.

2. Before the expiration of a term to which appointed, the chief may be removed by the police commission only for cause. As prerequisites to removal, the chief shall be given a written statement of the charge and an opportunity for a hearing before the police commission.

3. Gross or continuous maladministration shall be a cause sufficient for removal of the chief. Before removing the chief for such cause, the commission shall give the chief written notice of and a reasonable period to cure the gross or continuous maladministration. If the gross or continuous maladministration is not cured to the commission's satisfaction within the period given, the commission may proceed to remove the chief in accordance with subsection 2.

This subsection shall not be construed as:

(a) Making gross or continuous maladministration the only cause sufficient for removal of a chief; or
(b) Requiring the commission to give the notice and opportunity for cure specified under this subsection when removing a chief for a cause other than gross or continuous maladministration.

(Reso. 83-357; 1998 General Election Charter Amendment Question No. 6(I))

Section 6-1604. Powers, Duties and Functions –

The chief of police shall:

(a) Be responsible for the preservation of the public peace; the protection of the rights of persons and property; the prevention of crime; the detection and arrest of offenders against the law and the enforcement and prevention of violations of all laws of the state and city ordinances and all rules and regulations made in accordance therewith.
(b) Train, equip, maintain and supervise the force of police officers.
(c) Serve process and notices both in civil and criminal proceedings.
(d) Promulgate rules and regulations necessary for the organization and internal administration of the department.
(e) Prepare and, when deemed necessary, update a five-year plan of goals and objectives for the police department. The chief shall submit the plan and each update to the commission for review and recommendations.
(f) Appoint the deputy chiefs of police. A deputy chief shall have the right of reinstatement to a previously occupied civil service position in the police department when (1) the deputy chief had held a permanent appointment to the position immediately before appointment to the office of deputy chief; and (2) the deputy chief's tenure in the office has not been terminated for cause. If exercising the right, the deputy chief shall be reinstated, without necessity of examination, to the former civil service position immediately following termination of tenure as deputy chief.
(g) Perform such other duties as may be required by this charter or by law.

(1998 General Election Charter Amendment Question No. 6(II))

Section 6-1605. Police Commission –

There shall be a police commission which shall consist of seven members. The commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties. The commission shall be governed by the provisions of Section 13-103 of this charter.

Section 6-1606. Powers, Duties and Functions –

The police commission shall:

(a) Adopt such rules as it may consider necessary for the conduct of its business and review rules and regulations for the administration of the department.
(b) Review the annual budget prepared by the chief of police and may make recommendations thereon to the mayor.
(c) Submit an annual report to the mayor and the city council.
(d) Receive, consider and investigate charges brought by the public against the conduct of the department or any of its members and submit a written report of its findings to the chief of police. A summary of the charges filed and their disposition shall be included in the annual report of the commission.
(e) Review and, if deemed necessary, make recommendations on the five-year plan and any update of goals and objectives for the police department which is submitted by the chief of police. The commission shall not have the power to approve, modify, or reject the plan or any update.
(f) Compare at least annually the actual achievements of the police department against the goals and objectives in the five-year plan or latest update submitted by the chief.
(g) Evaluate at least annually the performance of duties by the chief of police.

Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. *(1998 General Election Charter Amendment Question No. 6(III))*

Section 6-1607. Suspension; Removal; Appeals –

1. Suspension or removal of any officer or employee shall be made pursuant to law and the rules and regulations of the department.

2. Appeals from personnel actions shall be in accordance with Section 6-1108 of this charter. *(1998 Reorganization)*

Section 6-1608. Political Activities Prohibited –
(Repealed; *2006 General Election Charter Amendment Question No. 12(d))*

CHAPTER 17 - DEPARTMENT OF TRANSPORTATION SERVICES

Section 6-1701. Organization –

There shall be a department of transportation services which shall consist of a director of transportation services, transportation commission, and necessary staff. The director of transportation services shall be the administrative head of the department. *(Reso. 95-205)*

Section 6-1702. Director of Transportation Services –

The director of transportation services shall be appointed by the mayor, subject to council confirmation, in accordance with Section 4-104.1 of this charter. The director may be removed by the mayor at will without necessity of council action. *(Reso. 95-205)*

Section 6-1703. Powers, Duties and Functions –

1. The director of transportation services shall:
   (a) Plan, operate and maintain transportation systems, including bikeways, except for activities relating to the city's fixed guideway mass transit system, to meet public transportation needs, in accordance with the general plan and development plans, and advise on the design and construction thereof.
   (b) Locate, select, install and maintain traffic control facilities and devices.
   (c) Provide educational programs to promote traffic safety.
   (d) Promulgate rules and regulations pursuant to standards established by law.
   (e) Manage and maintain all commercial parking facilities except facilities that are attached or adjacent to a building or project managed by another city agency.

2. The director of transportation services shall have no power, duty, or function with respect to transportation systems, facilities, or programs which are under the jurisdiction of the public transit authority.

(Reso. 95-205; 1998 Reorganization; 2006 General Election Charter Amendment Question No. 8; Reso. 08-166; Reso. 09-252; Reso 15-68)

Revision note

Text inserted based upon Resolution No. 09-252, CD1, to address citation error.

Section 6-1704. Transportation Commission –

1. There shall be a transportation commission consisting of seven members appointed as follows:

(a) Three members shall be appointed by the mayor without necessity of council confirmation;
(b) Three members shall be appointed by the council; and
(c) One member shall be nominated and, upon council confirmation, appointed by the mayor. The member appointed pursuant to this paragraph shall be the chair of the commission.

Each member shall be a duly registered voter of the city.

2. Each member of the transportation commission shall be appointed to a five-year term; except that:

(a) Of the initial members appointed by the mayor without council confirmation, one shall be appointed to a two-year term, one shall be appointed to a three-year term, and one shall be appointed to a four-year term; and
(b) Of the initial members appointed by the council, one shall be appointed to a two-year term, one shall be appointed to a three-year term, and one shall be appointed to a four-year term.

The term of each member shall commence on July 1 and expire on June 30 of the applicable years. A member, however, may serve beyond the expiration date until a successor is appointed and qualified. The term of the successor, no matter when appointed, shall commence on the July 1 immediately following the June 30 expiration of the predecessor's term.

When a member leaves the commission by other than expiration of a term, a successor shall be appointed to serve the remainder of the unexpired term. The successor shall be appointed in the same manner as the predecessor.

The council may establish procedures by ordinance for the replacement of a member who cannot serve temporarily because of illness, incapacity, or absence.

No person shall serve on the commission for more than two consecutive full terms or more than ten consecutive years, whichever is greater.

3. A majority of the entire membership of the transportation commission shall constitute a quorum.

The affirmative vote of a majority of the entire membership of the commission shall be necessary to take an action.

4. Section 13-103 of this charter shall not apply to the transportation commission or its members. *(Reso. 95-205)*

Section 6-1705. Powers, Duties and Functions –

1. The transportation commission shall:

(a) Adopt rules for the conduct of its business.
(b) Evaluate at least annually the performance of the director of transportation services and, if appropriate, make recommendations to address the results of the evaluation.
(c) Review and make recommendations on rules concerning the administration and operation of the department of transportation services.
(d) Review and make recommendations on the annual budget prepared by the director of transportation services.
(e) Receive, review, and make recommendations on complaints regarding the systems, programs, and facilities under the department of transportation services.
(f) Recommend changes to the public transit fare structure when deemed necessary and appropriate.

(g) Review and make recommendations concerning the performance of public transit and other transportation system contractors under the jurisdiction of the department of transportation services.

(h) Submit an annual report to the mayor and council.

The commission shall make the recommendations authorized under this subsection to the director of transportation services, mayor, and council.

2. Except for purposes of inquiry, neither the transportation commission nor its members shall interfere in any way with the administrative affairs of the department of transportation services. *(Reso. 95-205)*

Section 6-1706. Pedestrian and Bicycle Friendly City –

It shall be one of the priorities of the department of transportation services to make Honolulu a pedestrian- and bicycle-friendly city. *(2006 General Election Charter Amendment Question No. 8)*

ARTICLE VII - BOARD OF WATER SUPPLY

Section 7-101. Organization –

There shall be a department of water, to be known as the "board of water supply," consisting of a board of water supply, manager and chief engineer of the board of water supply and the necessary staff.

Section 7-102. Definitions –

The terms "department" and "board" as used in this article of the charter shall have the following meaning:

(a) "Department" shall mean the governmental unit known as the "board of water supply," unless the context indicates otherwise.

(b) "Board" shall mean the policy-making body, consisting of seven members of the board of water supply.

Section 7-103. Powers, Duties and Functions of the Department –

1. All water systems of the city, including water rights and water sources, together with all materials, supplies and equipment and all real and personal property used or useful in connection with such water systems shall be under the control of the department.

2. The department shall have full and complete authority to manage, control and operate the water systems and properties used or useful in connection with such water systems.

3. The department shall:

(a) Make studies, surveys, investigations and estimates relating to the locations and sources of water supply within the city, the amounts available for current and prospective uses, the water resources which may be made available for such uses and the maximum productivity of such sources.

(b) Investigate, examine, inspect and ascertain the manner and extent of use or other disposition of any water by any person irrespective of ownership thereof and any machinery, pump or other plant or equipment and conduits, pipes or other means used

for the elevation, transmission or distribution of water, upon either public or private property and, in the case of wells, ascertain, as far as practicable, the depth thereof, depth and thickness of the different strata penetrated, pressure, quantity, quality or chemical composition of the water, and the general conditions surrounding the same, including encasement, capping and other equipment or means of control thereof.

(c) Devise ways and means for the economic distribution and conservation of water.

(d) Make contracts necessary or convenient to the execution and performance of its powers, duties and functions.

4. To carry out the powers, duties and functions of the department, any member or authorized representative of the department may enter upon any public or private property at any reasonable time without warrant, doing no unnecessary injury thereto. *(Reso. 70 and 253 (1974))*

Section 7-104. Board of Department of Water –

The board shall consist of seven members. The chief engineer of the department of facility maintenance of the city and the director of transportation of the State shall be members ex officio of the board. Five other members shall be appointed as provided by Section 13-103 of this charter. The board shall be governed by the provisions of Section 13-103 of this charter. *(Reso. 83-357; 1992 General Election Charter Amendment Question No. 32A(17); 1998 Reorganization)*

Section 7-105. Powers, Duties and Functions of the Board of Water Supply –

The board of water supply shall:

(a) Appoint and remove the manager and chief engineer of the department. The manager and chief engineer shall be a registered engineer who shall have had a minimum of five years of training and experience in waterworks activities or related fields, at least three years of which shall have been in a responsible administrative capacity.

(b) Fix the salary of the manager and chief engineer.

(c) Have the authority to create and abolish positions.

(d) Determine the policy for construction, additions, extensions and improvements to the water systems of the city which shall include a long range capital improvement program covering a period of at least six years which shall be adopted after consultation with the director of planning and permitting and which may be amended or modified by the board from time to time.

(e) Have the authority to acquire by eminent domain, purchase, lease or otherwise, in the name of the city, all real property or any interest therein necessary for the construction, maintenance, repair, extension or operation of the water systems of the city. The council shall take no action to acquire real property or any interest therein for the department without the written approval of the board.

(f) Have the authority to recommend to the council the sale, exchange or transfer of real property or any interest therein which is under the control of the department. The council shall take no action to dispose of such property without the prior approval of the board, and all proceeds from the disposition of such property shall be paid into the special fund of the department.

(g) Have the authority to enter into arrangements and agreements, as it deems proper for the joint use of poles, conduits, towers, stations, aqueducts, and reservoirs, for the operation of any of the properties under its management and control.

(h) Have the authority to issue revenue bonds under the name of "board of water supply."

(i) Modify, if necessary, and approve and adopt annual operating and capital budgets submitted by the manager and chief engineer.
(j) Prescribe and enforce rules and regulations having the force and effect of law to carry out the provisions of this article of the charter, including (1) the regulation of water systems and necessary appurtenances for subdivisions and other properties and requirements for adequate water supply and storage facilities for domestic use and fire protection, (2) the prevention of waste and pollution of water, (3) the manner in which new wells or shafts may be bored, drilled or excavated, cased and capped or recased, (4) the manner in which wells or shafts shall be maintained, controlled and operated to prevent waste of water or the impairment of potability, (5) the limitation to beneficial uses of all water, (6) in times of shortage or threatened shortage of water or of danger to potability of the water of any ground water basin or area by overdraft on such basin, the restriction of the drawing of water in all wells supplied from such basin on a basis proportionate to the proper and beneficial uses served by them respectively, and (7) other matters having for their object the proper conservation and beneficial use of the water resources available for the city.
(k) Hear appeals from the order of the manager and chief engineer refusing, suspending or revoking any permit for the sinking, drilling or reopening of any well or shaft for the development of underground water supply.

(Reso. 70, 253 (1974) and 83-357; 1998 General Election Charter Amendment Question No. 1(IV)

Section 7-106. Powers, Duties and Functions of the Manager and Chief Engineer –

The manager and chief engineer shall:

(a) Administer the affairs of the department, including the rules and regulations adopted by the board.
(b) Grant, suspend or revoke permits under conditions prescribed by the rules and regulations of the department for the drilling, casing, recasing or reopening of any well or shaft for the development of underground water.
(c) Unless otherwise provided by this charter, sign all necessary contracts for the department.
(d) Appoint and remove members of the staff.
(e) Make recommendations to the board to create or abolish positions.
(f) Prepare bills, collect and, by appropriate means including discontinuance of service and civil action, enforce the collection of charges for the furnishing of water and for water services.
(g) Prepare payrolls and pension rolls.
(h) Maintain proper accounts in such manner as to show the true and complete financial status of the department and the results of management and operation thereof.
(i) Prepare annual operating and capital budgets.
(j) Prescribe rules and regulations as are necessary for the organization and internal management of the department.
(k) Recommend rules and regulations for adoption by the board.

(Reso. 70 and 253 (1974))

Section 7-107. Personnel Administration; Centralized Purchasing; Auditing; Pension –

1. The department shall be subject to the civil service provisions of this charter.
2. The department shall be subject to the centralized purchasing and disposal of personal property provisions of this charter.
3. The department shall come within the purview of the performance audit conducted by the

managing director and such audits as may be required by the council or conducted by the city auditor.

4. Pensions for officers and employees shall be governed by law. *(Reso. 02-39)*

Section 7-108. Independent Post Audit –

The accounts and financial status of the department shall be examined annually by a certified public accountant whose services shall be contracted for by the board and whose fees shall be paid as an expense of the department. The result of such examination shall be reported to the board, the council and the mayor.

Section 7-109. Rates, Revenues and Appropriations –

The board shall have the power to fix and adjust reasonable rates and charges for the furnishing of water and for water services so that the revenues derived therefrom shall be sufficient to make the department self-supporting. Such revenues shall be sufficient to meet all necessary expenditures, including expenditures for (a) operating and maintenance expenses; (b) repairs, replacements, additions and extensions; (c) accident reserve, pension charges and compensation insurance; (d) payment of principal and interest on all bonds, including reserves therefor, issued for the acquisition or construction of waterworks and extensions thereto, and (e) reserve funds under Section 7-112 of this charter. All water furnished to the city or any department thereof shall be charged to the respective departments and collected at the regular rates established by the board. There shall be no free water, except as authorized by the state. The board may make appropriations for the purposes stated in this section of the charter. *(Reso. 70 and 253 (1974))*

Section 7-110. Public Hearings –

The board shall hold public hearings prior to fixing and adjusting rates and prior to the adoption of the budget.

Section 7-111. Receipt and Disbursement of Funds –

The department shall make its own collections, but all receipts shall be paid daily into the city treasury and maintained in a fund separate and apart from any other funds of the city.

All moneys expended by the department shall be disbursed with the written approval of the department according to the procedures prescribed by the director of budget and fiscal services. *(Reso. 70 and 253 (1974); 1998 General Election Charter Amendment Question No. 2(VI))*

Section 7-112. Reserve Funds –

The board may provide for the accumulation of funds for the purpose of financing major replacements, or extensions and additions to the water systems, the average estimated annual increment to which, for a period of ten years, shall not exceed fifteen percent of the gross revenues of the water systems of the department in any fiscal year. *(Reso. 70 and 253 (1974))*

Section 7-113. Bond Sales –

The director of budget and fiscal services, when so directed by the board, shall sell such revenue bonds as may be authorized by the board for the acquisition, construction, replacement, extension or completion of water systems in accordance with the procedures prescribed by law for such sales. The proceeds from such sales shall be kept by the director of budget and fiscal services in a separate fund to be used only for the purposes for which the bonds were sold. *(Reso. 70 and 253 (1974); 1998 General Election Charter Amendment Question No. 2(VI))*

Section 7-114. Special Deposits –

Whenever there are on deposit with the director of budget and fiscal services funds belonging to the department in an amount greater than is necessary for the immediate needs of the department, the director shall, upon the direction of the board, deposit such funds in such depositories as provided by law for the city. All interest received by the director upon the funds so deposited shall be credited to the department. All interest from all other moneys of the department on deposit in any bank shall likewise be credited to the department. *(1998 General Election Charter Amendment Question No. 2(VI))*

Section 7-115. Performance Bonds –

The board may require an individual or blanket bond in such amount as it shall deem proper for any or all employees, which bond shall be duly conditioned for the faithful performance of duties, and the board may provide that the premium on the bond be paid out of the revenues of the department.

Section 7-116. Legal Counsel –

The corporation counsel of the city shall be the legal adviser of the department and shall institute and defend, as the board may require, any and all actions involving matters under the jurisdiction of the department. The corporation counsel may, with the prior approval of the board, compromise, settle or dismiss any claim or litigation, for or against the department.

The compensation for such legal work shall be as agreed upon by the board and the council and shall be paid from the revenues of the department.

The department may employ an attorney to act as its legal adviser and to represent the department in any litigation to which the department is a party. *(Reso. 83-357)*

Section 7-117. Service of Process; Claims –

The department may sue and be sued under the name of the "Board of Water Supply, City and County of Honolulu." Service of process in all matters affecting the department or any property under its jurisdiction may be made by service upon any member of the board or on the manager and chief engineer. Any action commenced or prosecuted for the recovery of damages for any injury to persons or property by reason of negligence of the board or of any agents or employees of the department, shall be commenced and prosecuted against the department. No action shall be maintained for the recovery of damages unless a written statement verified by oath of claimant, setting forth the nature and items of the claim and the time and place where the alleged injury occurred, has been filed with the department within six months after the date of sustaining the injury.

Section 7-118. Appeals –

1. Any order of the manager and chief engineer refusing any permit or suspending or revoking any permit for the sinking, drilling or reopening of any well or shaft for the development of underground water shall be subject to an appeal therefrom to the board. The board shall have power to review and to affirm, modify or reverse any decision or order of the manager and chief engineer so appealed from. Such appeal shall be taken within ten days after service of the order of the manager and chief engineer.

2. Any decision of the board, upon such review, shall be appealable directly to the supreme court of the state by any person who has been refused a permit or whose permit has been suspended or revoked. The court shall have power to review and to affirm, modify or reverse any decision or

order of the board so appealed from and may determine all questions of fact or of law involved in the appeal. Such appeal shall be taken within ten days after service of the board's order by filing notice of appeal with the clerk of the supreme court of the state and serving a copy thereof upon the board stating the grounds therefor.

Section 7-119. Applicability of Charter Provisions –

Except as otherwise provided, no provision of this charter, other than those set forth in this article of the charter, shall be applicable to the department.

ARTICLE VIII - PROSECUTING ATTORNEY

Section 8-101. Organization –

There shall be a department of the prosecuting attorney headed by a prosecuting attorney. *(Reso. 78-279)*

Section 8-102. Term of Office –

The term of office of the prosecuting attorney shall commence at twelve o'clock meridian on the second day of January following the prosecuting attorney's election. *(Reso. 78-279, 83-357 and 86-238; 1992 General Election Charter Amendment Question No. 4)*

Section 8-103. Prosecuting Attorney, Qualifications –

The prosecuting attorney shall be a duly registered voter of the city, an attorney licensed to practice and in good standing before the supreme court of the state, who shall have engaged in the practice of law for at least five years, and who shall have been actively involved in criminal cases for at least three years within ten years next preceding the prosecuting attorney's election. *(Reso. 78-279 and 83-357; 1992 General Election Charter Amendment Question No. 32A(12))*

Section 8-104. Powers, Duties and Functions –

1. The prosecuting attorney shall:
   (a) Attend all courts in the city and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the state and the ordinances and rules and regulations of the city.
   (b) Prosecute offenses against the laws of the state under the authority of the attorney general of the state.
   (c) Appear in every criminal case where there is a change of venue from the courts in the city and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the city.
   (d) Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the prosecuting attorney has information that any such offenses have been committed, and for that purpose, take charge of criminal cases before the district judges either in person or by a deputy or by such other prosecuting officer or in such other manner as the prosecuting attorney shall designate with approval of the district court or in accordance with statute; draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration; and investigate all matters which may properly come before the

prosecuting attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the prosecuting attorney.

2. The prosecuting attorney may:
   (a) Research, evaluate, and make recommendations regarding crime, crime prevention, and the criminal justice system to the governor, the legislature, the judiciary, the council, the mayor, the Honolulu police department and other criminal justice agencies, or the general public, as the prosecuting attorney deems appropriate.
   (b) Provide crime prevention training programs for law enforcement agencies, citizens, businesses, and civic groups.
   (c) Develop public education programs through various broadcast or print media, to provide the general public information that will assist citizens in developing the knowledge and confidence to prevent crime and to avoid being victims of crime.
   (d) Receive and expend financial grants, donations and other funds as permitted by the provisions of the revised charter, city ordinances and applicable city, state, and federal financial and budget policies for crime research, prevention, and education.

(Reso. 78-279, 83-357, 84-197 and 07-223)

Notes

Subpoena powers of prosecuting attorney are a matter of statewide concern and are limited to those authorized in HRS Section 28-2.5. Marsland v. First Hawaiian Bank, 70 Haw. 126, 764 P.2d 1228 (1988).

Prosecuting attorney is not authorized by law to bring a civil action to abate a nuisance. Marsland v. Pang, 5 Haw. App. 463, 701 P.2d 175 (1985).

The phrase "under the authority of the attorney general" is a recognition of the attorney general's status as the State's chief law enforcement officer and cannot sensibly be construed as a reservation of power to usurp, at the attorney general's sole discretion, the functions of the public prosecutor. The attorney general may supersede the public prosecutor in the event of serious dereliction of duty to act or in the unusual case of serious impropriety should the prosecutor choose to act. Amemiya v. Sapienza, 63 Haw. 424, 629 P.2d 1126 (1981).

The term "attend before and give advice to the grand jury" merely describes a general function and does not affect the manner in which the grand jury investigatory and indictment process is to be conducted, or require instruction on such items as the availability of defenses. State v. Freedle, 1 Haw. App. 396, 620 P.2d 740 (1980). See also State v. Bell, 60 Haw. 241, 589 P.2d 517 (1978).

Private counsel retained by prosecuting attorney may be supervised by a duly appointed deputy. Okuda v. Ching, 71 Haw. 140, 785 P.2d 943 (1990).

The charter did not grant the prosecuting attorney the authority to use public funds and resources to advocate for a proposed constitutional amendment in a general election, nor was conduct authorized by statute prescribing duties of the attorney general for crime research, prevention and education. Rees v. Carlisle, 113 Hawai'i 446, 153 P.3d 1131 (2007).

Section 8-105. Staff –

1. The prosecuting attorney may appoint deputies, administrative or executive assistants, and other necessary staff, including investigators who shall have all the powers and privileges of a police officer of the city.

2. At the request of the prosecuting attorney, one or more officers of the police department may be detailed by the chief of police for the purpose of doing necessary investigative work, and such police officers shall continue to serve on such a detail during the pleasure of the prosecuting attorney and as long as the necessity of such detail exists.

3. The deputy who is designated as first deputy shall, during the temporary absence or disability of the prosecuting attorney, assume the power and perform the duties of the prosecuting attorney. *(Reso. 78-279 and 84-197; 1992 General Election Charter Amendment Question No. 12)*

Section 8-106. Vacancy in Office –

A vacancy in the office of the prosecuting attorney caused by death, resignation, removal or disqualification to hold office shall be filled as follows:

(a) If the unexpired term is for less than one year, the office of the prosecuting attorney shall be filled by the first deputy who shall act as prosecuting attorney, or if the position of first deputy is vacant or if the first deputy does not meet the minimum qualifications for prosecuting attorney, the mayor with the approval of the council shall fill the vacancy by appointment of a person with the requisite qualifications within thirty days after the occurrence of the vacancy.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by a special election to be called by the council within ten days and to be held within sixty days after the occurrence of the vacancy. The electors of the city shall then elect a successor with requisite qualifications to fill the vacancy for the remainder of the term. If any special or general election is to be held in the city after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election shall be held in conjunction with such other election. Pending the election of the prosecuting attorney, the first deputy shall act as prosecuting attorney. If the position of first deputy is vacant or if the first deputy does not meet the minimum qualifications for prosecuting attorney, the mayor, with the approval of the council, shall fill the vacancy by appointment of a person with the requisite qualifications within thirty days after the occurrence of the vacancy.

(Reso. 78-279, 83-357 and 84-197; 1992 General Election Charter Amendment Question No. 32A(11))

Section 8-107. Removal of Prosecuting Attorney –

The prosecuting attorney may be removed by recall or impeachment as provided in Article XII of this charter. *(Reso. 78-279, 83-357 and 84-197; 1992 General Election Charter Amendment Question No. 32A(13); cf. Question No. 15)*

ARTICLE IX -
FINANCIAL ADMINISTRATION

CHAPTER 1 -
BUDGETING

Section 9-101. Fiscal Year –

The fiscal year of the city shall begin on the first day of July and end on the last day of June of the succeeding year.

Section 9-102. Preparation and Submission of the Program and Annual Budget for the Executive Branch –

1. Not less than one hundred twenty days prior to the end of each fiscal year, the mayor shall prepare and submit to the council:
   - (a) An operating and capital program and a statement of relationships between the operating and capital components for the ensuing six fiscal years for the executive branch.
   - (b) An operating and capital budget and a statement of relationships between operating and capital items for the ensuing fiscal year for the executive branch.
   - (c) An accompanying message and necessary proposed ordinances for the ensuing fiscal year. The proposed budget ordinances shall be in a form prescribed by law.
   - (d) Such other information as may be requested by the council.
2. Sufficient copies of the program and annual budget shall be supplied by the mayor to the city clerk for distribution to the members of the council and the general public.
3. Appropriations to fund the activities of the executive branch shall only be made through the annual budget ordinances for the executive branch and amendments or supplements thereto.

(Reso. 86-237, 90-295 and 95-205)

Section 9-103. Scope of the Annual Executive Budget –

The annual executive budget shall contain at least the following:

- (a) An explanation of the financial program and policies proposed by the mayor for the executive branch for the ensuing fiscal year, including the relationships of the financial program and policies and operating and capital program to the general plan and development plans of the city and additionally, a financial statement reflecting the relationship of the expenses of the council, based upon current level of services, to the city's financial program.
- (b) An operating budget which shall at least contain a statement of transactions of each of the pension systems, trust proceeds funds, debt service funds and revolving funds for the preceding, current and ensuing fiscal periods.
- (c) A capital budget which shall contain at least the following:
  - (1) Permanent public improvements and furnishings, fixtures and appurtenances of any improvement when first constructed or acquired.
  - (2) The acquisition of land or any interest therein for any permanent public improvement.
  - (3) Planning, engineering and conceptual studies relative to proposed public improvements or land acquisition.

(4) An explanation of the relationship of the capital program and budget to the general plan and development plans of the city.
(d) Such other information as may be requested by the council.

Section 9-104. Consideration and Adoption by the Council –

1. Upon receipt of the executive program, annual budget, and proposed ordinances from the mayor, the council shall immediately notify the public of its intention to hold public hearings on the proposed executive program and annual budget and on the proposed annual legislative budget. Such notice shall conform to the provisions of Section 13-106 of this charter, and in addition, shall set forth the following:

(a) A summary of the estimated revenues and expenditures as prepared by the director of budget and fiscal services.
(b) Details of recommended new sources of revenues or increased rates for existing licenses, fees or other revenues.
(c) Summaries of the executive program and budget and of the legislative budget.
(d) Notice that copies of the executive and legislative budgets are available at the office of the city clerk.
(e) Such other information as the council may deem desirable.

2. Upon the conclusion of the hearings, the council may add new items to, or delete or amend any item or items in, the proposed executive program and annual budget and proposed annual legislative budget. The council shall adopt the executive program and pass on third reading the annual executive and legislative budget ordinances on or before the fifteenth day of June of the fiscal year currently ending. If final action is not taken on or prior to that day, the budget ordinances as submitted shall be deemed to have been enacted.

Notwithstanding the above, the city council shall be authorized additional time beyond the fifteenth day of June to reconsider and take final action on any vetoed item or items or portion or portions of the annual budgets vetoed by the mayor. The number of additional days, procedures and requirements as to votes shall be identical with that of bills which have been disapproved by the mayor. *(Reso. 78-271; 1998 General Election Charter Amendment Question Nos. 2(VII) and 7(I))*

Section 9-105. Amendments to the Annual Legislative and Executive Budget Ordinances and Executive Program; Other Appropriations –

1. Amendments to the annual legislative budget ordinance may be initiated and considered by the council under the same procedures prescribed for the adoption of the annual legislative budget ordinance, subject to the proviso in subsection 2(a) of this section of the charter.

2. Amendments to the annual executive budget ordinances and program may be submitted by the mayor and considered by the council under the same procedures prescribed for the enactment of the annual executive budget ordinances and adoption of the executive program, provided that:

(a) No amendment shall increase the aggregate of authorized expenditures to an amount greater than the estimate of available resources for the fiscal year.
(b) Amendments to the capital budget ordinance shall conform to the operating and capital program, as amended.

3. Appropriations for items not included in the annual legislative or executive budget ordinances may be proposed by the council or by the mayor and enacted for the following purposes only:

(a) To meet contingencies which could not be anticipated when the budget ordinances were passed.
(b) To pay the expenses of holding special elections and elections on proposals to amend this charter.

Unless paid for out of current revenues, all amounts appropriated under this subsection of the charter must be included as liabilities of the city in the next succeeding annual legislative or executive budget ordinances. Operating expenses shall neither be appropriated nor paid out of loan funds, except to meet emergencies as declared by the mayor. *(Reso. 90-295 and 95-205)*

Section 9-106. Administration and Enforcement of the Budget Ordinances –

1. Administration and enforcement of the legislative budget ordinance: Immediately following the enactment of the legislative budget ordinance, the presiding officer of the council shall submit to the director of budget and fiscal services a schedule showing the expenditures of the legislative branch anticipated for each quarter of the fiscal year. The schedule shall not require the approval of nor can it be altered by the mayor, and the council may proceed without any other authority to incur obligations and make expenditures after the schedule has been submitted. The director of budget and fiscal services shall approve or issue any requisition, purchase order, voucher, warrant or contract, in accordance with the schedule and upon request of the presiding officer of the council. Barring judicial order prohibiting the honoring of any specific requisition, purchase order, voucher, warrant or contract, the director of budget and fiscal services shall process the same for payment within three working days from the date of receipt thereof. Appropriations for the legislative branch shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse at the end of the fiscal year.
2. Administration and enforcement of the executive operating budget ordinance:
   (a) The enactment of the executive operating budget ordinance or any supplementary appropriation shall constitute an appropriation of the sums specified therein for the purposes and from the funds indicated. Such appropriation shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse to the end of the fiscal year. Executive agencies authorized to make expenditures under the executive operating budget ordinance may proceed without other authority from the council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available.
   (b) Immediately following the enactment of the executive operating budget ordinance, the heads of all executive agencies shall submit to the director of budget and fiscal services schedules, supported by work programs, showing the expenditures anticipated for each quarter of the fiscal year.
   (c) The approval of an expenditure schedule by the mayor shall constitute a budgetary allotment which shall, unless a revision thereof is approved by the mayor, be binding upon such agencies. The director of budget and fiscal services shall approve or issue no requisition, purchase order, voucher or warrant that is not in accordance with an allotment.
   (d) The allotments herein provided may be altered at any time by the mayor. The mayor shall direct appropriate revisions in allotments to keep expenditures within the revenues received or anticipated.
   (e) Any part of an allotment which is not expended or encumbered shall lapse at the end of the allotment period.
   (f) The mayor may transfer an unencumbered appropriation balance or portion thereof

within the same department only as prescribed by law. Transfers between departments shall be made only by the council by ordinance upon the recommendation of the mayor.

(g) The director of budget and fiscal services and the director's surety shall be liable for moneys withdrawn from any operating fund other than in accordance with the executive operating budget ordinance and allotments.

3. Administration and enforcement of the executive capital budget ordinance:

(a) Appropriations authorized in the executive capital budget ordinance or any supplementary appropriation shall be considered valid only for the fiscal year for which made and for twelve months thereafter, and any part of such appropriations which is not expended or encumbered shall lapse twelve months after the end of the fiscal year. Agencies authorized to make expenditures under the executive capital budget ordinance may proceed without other authority from the council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available.

(b) The director of budget and fiscal services shall be responsible for the enforcement of the executive capital budget ordinance to the same extent that the director is responsible for the enforcement of the executive operating budget ordinance.

(Reso. 78-273, 83-357, 86-237, 90-295 and 95-205; 1998 General Election Charter Amendment Question No. 2(VII); 2006 General Election Charter Amendment Question No. 11)

Section 9-107. Improvement Revolving Fund –

There may be established a revolving fund for the purpose of acquiring real estate and constructing improvements thereon. Moneys in the fund may be used to option, purchase, lease, make down payments and take other actions necessary to acquire real estate or any interest therein for specific public purposes related to the development of the city as proposed in the general plan and development plans. No expenditure from this fund shall be made unless approved by the council. Reimbursements to this fund shall be made from the appropriated funds of any project for which such expenditures are made, and such reimbursements shall be effected immediately upon the appropriation of funds for such project.

CHAPTER 2 - FUND ADMINISTRATION

Section 9-201. Deposit of Funds –

Money received by officers and employees shall be deposited promptly to the city's account in depositories authorized by law. The depository account shall indicate the name of the fund or the name of the department, board or beneficiary for whom deposited.

Section 9-202. Creation of Funds –

In addition to the funds established by this charter, the council, on its own initiative or on the recommendation of the mayor, may establish other funds when the council deems it necessary and when no appropriate class of funds exists. *(Reso. 12-113)*

Section 9-203. Fund Investment Policy –

Funds in excess of the immediate needs of the city shall, whenever practicable, be invested at interest in accordance with applicable law.

Section 9-204. Clean Water and Natural Lands Fund and Affordable Housing Fund --

1. There shall be established a Clean Water and Natural Lands Fund and an Affordable Housing Fund. In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one percent of the estimated real property tax revenues, one-half of which shall be deposited into the Clean Water and Natural Lands Fund and the remaining one-half of which shall be deposited into the Affordable Housing Fund.

2. Moneys in the Clean Water and Natural Lands Fund shall be used to purchase or otherwise acquire real estate or any interest therein for land conservation in the city for the following purposes: protection of watershed lands to preserve water quality and water supply; preservation of forests, beaches, coastal areas and agricultural lands; public outdoor recreation and education, including access to beaches and mountains; preservation of historic or culturally important land areas and sites; protection of significant habitats or ecosystems, including buffer zones; conservation of land in order to reduce erosion, floods, landslides, and runoff; and acquisition of public access to public land and open space.

3. Moneys in the Affordable Housing Fund shall be used to provide and maintain affordable housing for persons earning less than fifty percent of the median household income in the city for the following purposes: provision and expansion of affordable housing and suitable living environments principally for persons of low and moderate income through land acquisition, development, construction, and maintenance of affordable housing for sale or for rental, provided that the housing remains affordable in perpetuity.

4. The moneys in each fund may also be used for the payment of principal, interest, and premium, if any, due with respect to bonds issued subsequent to enactment of this section and pursuant to Sections 3-116 or 3-117, in whole or in part, for the purposes enumerated in subsections 2 and 3 of this section and for the payment of costs associated with the purchase, redemption or refunding of such bonds.

5. At any given time, no more than five percent of the moneys in each fund shall be used for administrative expenses.

6. Any balance remaining in each fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in each fund shall not be used for any purposes except those listed in this section.

7. The council shall by ordinance establish procedures for the administration and expenditure of moneys in each fund. The appropriations to each fund shall not substitute for, but shall be in addition to, those appropriations historically made for the purposes stated in this section. *(2006 General Election Charter Amendment Question No. 3)*

Section 9-205. Grants in Aid Fund --

1. There shall be established a Grants in Aid Fund. Monies in the Grants in Aid Fund shall be used by the city to award grants in aid to federal income tax exempt non-profit organizations that provide services to economically and/or socially disadvantaged populations or provide services for public benefit in the areas of the arts, culture, economic development or the environment.

2. In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one-half of one percent of the estimated general fund revenues which shall be deposited into the Grants in Aid Fund.

3. No less than $250,000 from the Grants in Aid Fund shall be expended annually in each council district.

4. At any given time, no more than five percent of the moneys in the Grants in Aid Fund shall be used for administrative expenses.

5. Any balance remaining in the fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in the fund shall not be used for any purpose except those listed in this section.

6. The council may waive the requirements of this section of the charter pertaining to the annual appropriation of general fund revenues to the grants in aid fund for any particular fiscal year, when the council finds by a two-thirds vote of its entire membership that an emergency due to a public calamity exists or the city could not otherwise fulfill its legal obligations.

7. There shall be established a grants in aid advisory commission to advise the city on grants issued under this section. The commission shall consist of seven members appointed by the mayor who shall serve for staggered terms of five years and until their successors have been appointed and qualified. The initial appointments shall commence no later than January 15, 2013, and shall be as follows:

(a) For a two-year term, two members.
(b) For a three-year term, two members.
(c) For a four-year term, two members.
(d) For a five-year term, one member.

8. The council shall by ordinance establish procedures for the administration and expenditure of the moneys in the fund. *(Reso. 12-44)*

CHAPTER 3 -
PROCUREMENT AND DISPOSITION OF PROPERTY

Section 9-301. Centralized Purchasing –

1. The department of budget and fiscal services shall be responsible for the procurement of all materials, supplies, equipment and services required by any agency of the city.

2. There shall be a standardization committee composed of five members. The mayor shall appoint four members, each of whom shall be from a separate department. The fifth member shall be a representative for the department of budget and fiscal services who shall serve as chair of the committee. The committee shall classify all materials, supplies, and equipment commonly used by the various agencies of the city and shall prepare and adopt standards and specifications for such materials, supplies and equipment.

3. All purchases and contracts for materials, supplies, equipment and services shall be made by advertising, except that such purchases and contracts may be negotiated without advertising if:

(a) The public exigency will not admit of the delay incident to advertising.
(b) The amount involved does not exceed limits specified for various types of contracts in applicable state statutes, as the same may be amended from time to time.
(c) It is impracticable to secure competitive bidding for materials, supplies and equipment, including animals, plants, food and fodder for animals in the zoo, non-processed agricultural products, patented or proprietary articles and books and publications.
(d) It is determined that the procurement of equipment determined to be technical equipment is necessary to assure standardization of the equipment and interchangeability of parts and that such standardization and interchangeability are necessary in the interest of economy.

The advertisement for bids shall be made for a sufficient time before the purchase or contract, and specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of the types of materials, supplies, equipment and services necessary to meet

the requirements of the agency concerned.

All bids shall be publicly opened at the time and place stated in the advertisement. Award shall be made with reasonable promptness by written notice to that responsible bidder, whose bid, conforming to the invitation for bids, will be most advantageous to the city, price and other factors considered.

4. Purchase orders shall be issued upon the endorsement of the purchasing administrator, and such endorsement shall be made in accordance with rules and regulations promulgated by the director of budget and fiscal services.

5. The director of budget and fiscal services shall, from time to time, secure from all agencies estimates of their needs for articles of common use and shall, when practicable, consolidate requisitions in order to secure the benefits of quantity purchases, and to that end, when authorized by the council, cooperate with other public agencies.

6. The director of budget and fiscal services shall by rules and regulations provide for:
   (a) Emergency purchases which might be required.
   (b) Petty cash funds or blanket purchase orders or both.
   (c) Noncompetitive purchases and contracts provided for under Subsection 9-301.3(c) of this charter.
   (d) Approval and signing procedures related to the issuance of purchase orders.
   (e) Such other matters as the director may reasonably deem necessary for the effective administration and implementation of federal, state and city purchasing and contracting laws.

7. The director of budget and fiscal services shall require such guarantees of performance by vendors as in the director's opinion may be necessary or as may be prescribed by ordinance. *(Reso. 90-295; 1992 General Election Charter Amendment Question Nos. 28, 29 and 32B; Reso. 95-205; 1998 General Election Charter Amendment Question No. 2 (VII); Reso. 10-110)*

Section 9-302. Disposition of Personal Property –

All agencies, the council and its offices, having materials, supplies or equipment which are not useful to them, shall, from time to time, and at least annually, furnish a list thereof to the director of budget and fiscal services who shall examine such property, and if the same is found to be usable, it shall be inventoried for use by the city. If it is found to be unusable for public purposes, the director of budget and fiscal services, shall dispose of the property by public auction, competitive bid, or other appropriate method, as provided for in rules and regulations of the director, and the proceeds shall be placed in the fund from which the original purchase was made. *(1998 General Election Charter Amendment Question No. 2 (VII); Reso. 10-110)*

Section 9-303. Insurance –

The director of budget and fiscal services shall procure insurance in such amounts and under such conditions as the council shall prescribe by ordinance for the protection of all properties of the city. Such insurance shall be procured from companies licensed to do business in the state. With reference to property under the control and management of the board of water supply, however, its board may specify the kind and amount of insurance to be procured. *(Reso. 90-295 and 95-205; 1998 General Election Charter Amendment Question No. 2(VII))*

Section 9-304. Surety Bonds –

Except as otherwise provided, the council shall determine which officers and employees shall be required to furnish surety bonds and shall determine the kind and amount of each individual or

blanket bond. All officers concerned with the receipt, collection, custody or disbursement of public funds shall be bonded. The director of budget and fiscal services shall procure all such surety bonds from companies licensed to do business in the state. All such bonds shall be in the favor of and the premiums thereon shall be borne by the city. *(1998 General Election Charter Amendment Question No. 2(VII))*

Section 9-305. Contracts –

1. Before execution, all written contracts to which the city is a party shall be approved by the corporation counsel as to form and legality. Except as otherwise provided, all such contracts shall be signed by the mayor. Except as provided in paragraph 2 below, nothing in this section and this article shall be construed as granting any authority to the mayor, the corporation counsel or any department to exercise control over the organization, programs, functions, operations or expenditures of the legislative branch.

2. Before execution, contracts involving financial obligations of the city shall also be approved by the director of budget and fiscal services as to the availability of funds in the amounts and for the purposes set forth therein. Such contracts shall not extend beyond the term for which an appropriation to finance such obligations has been made, except as otherwise provided by this charter. This paragraph shall not apply to obligations for the procurement of utility services. *(Reso. 78-272; 1998 General Election Charter Amendment Question No. 2(VII))*

ARTICLE X - SPECIAL ASSESSMENT IMPROVEMENTS

Section 10-101. Improvements by Special Assessments –

Improvements by special assessment shall be as provided by law. No changes, however, shall be made by the council regarding any matter under the control of the board of water supply without the prior approval of its board.

ARTICLE XI - STANDARDS OF CONDUCT

Section 11-101. Declaration of Policy –

Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct, to the end that the public may justifiably have trust and confidence in the integrity of government. They, as agents of public purpose, shall hold their offices or positions for the benefit of the public, shall recognize that the public interest is their primary concern, and shall faithfully discharge the duties of their offices regardless of personal considerations.

Section 11-102. Conflicts of Interest –

1. No elected or appointed officer or employee shall:
   (a) Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, 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 such person's official duties. Nothing herein shall preclude the solicitation or acceptance of lawful contributions for election campaigns.
   (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.
   (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.
   (d) Receive any compensation for such person's services as an officer or employee of the city from any source other than the city, except as otherwise provided by this charter or by ordinance.
   (e) Represent private interests in any action or proceeding against the interests of the city or appear in behalf of private interests before any agency, except as otherwise provided by law.
2. No appointed officer shall participate in or make any decision on a city matter if:
   (a) He or she was directly involved in the matter while employed with a private entity in the twelve months immediately preceding the start of the officer's current employment with the city; and
   (b) Such prior involvement on behalf of a private entity may tend to impair the independence of judgment in the performance of the officer's official duties.

The prohibition in this subsection shall apply for a period of twelve months from the start of the officer's current employment with the city. The officer may apply for a waiver from this prohibition to the ethics commission, which shall determine, based on the relevant circumstances, whether the waiver is in the best interests of the public. For the purposes of this subsection, the term "officer" shall exclude any member of a board or commission who is not the administrative head of an agency. *(Reso. 83-357 and 09-336)*

Section 11-103. Disclosure of Interest –

Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to such person's appointing authority or to the council, in the case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed with the city clerk. Any member of the council who knows he or she has a personal or private interest, direct or indirect, in any proposal before the council, shall disclose such interest in writing to the council. Such disclosure shall be made a matter of public record prior to the taking of any vote on such proposal. *(Reso. 83-357)*

Note

A councilmember's indirect personal interest in a townhouse development, in that land owned by him would benefit by road improvements required of developer, requires disclosure in writing under terms of municipal charter, but failure to disclose does not invalidate council action when sufficient votes existed excluding the councilmember's vote. Hui Malama Aina O Ko'olau v. Pacarro, 4 Haw.

App. 304, 666 P.2d 177 (1983).

Section 11-104. Fair and Equal Treatment –

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person. *(Reso. 83-357)*

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. *(Reso. 83-357)*

Section 11-106. Penalties and Disciplinary Action for Violations –

The failure to comply with or any violation of the standards of conduct established by this article of the charter or by ordinance 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 of the charter or by ordinance. The ethics commission may also impose civil fines established by ordinance for violations of the standards of conduct committed by elected and appointed officers and employees of the city with significant discretionary or fiscal power as determined by ordinance. *(2006 General Election Charter Amendment Question No. 5; Reso. 07-384)*

Section 11-107. Ethics Commission –

There shall be within the department of the corporation counsel for administrative purposes only an ethics commission which shall consist of seven members. The commission shall be governed by the provisions of Section 13-103 of this charter. In accordance with the prohibition in Article XIV of the Constitution of the State of Hawaii, the members of the ethics commission shall be prohibited from taking an active part in political management or in political campaigns.

The commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties. Such staff and consultants may include attorneys who may advise the commission independently of the department of the corporation counsel. All staff positions shall be exempt from the provisions of Chapter 11 of Article VI of this charter, but such staff positions, except the position of executive director, shall be included in the position classification plan. The executive director shall be an attorney qualified to practice law in the State of Hawaii. The salary of the executive director shall be fixed by ordinance.

The commission is authorized to hold hearings and to conduct investigations concerning the application of this article of the charter and shall have the powers provided in Section 13-114 of this charter.

The commission may, on its own initiative, render advisory opinions with respect to this article of the charter. An advisory opinion shall be rendered pursuant to a written request of any elected or appointed officer or employee concerned and may be rendered pursuant to the request of any

person. The commission shall publish its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of the persons involved.

The commission may impose civil fines established by ordinance against elected and appointed officers and employees of the city with significant discretionary or fiscal power as determined by ordinance, found by the commission to have violated the standards of conduct established by this article of the charter or by ordinance. The commission shall recommend appropriate disciplinary action against officers and employees found to have violated the standards of conduct established by this article of the charter or by ordinance. The appointing authority shall promptly notify the commission of the action taken on the recommendation. *(Reso. 84-234; 1998 Reorganization; 2006 General Election Charter Amendment Question Nos. 5 and 12(c); Reso. 07-384)*

Section 11-108. Registration of Lobbyists –

The council shall by ordinance provide for the registration of lobbyists, including the classification, issuance, revocation, suspension and renewal of certificates of registration, the disclosure of information necessary in the public interest, and the investigative procedures and sanctions necessary to effectuate the purposes of the ordinance. As used herein, "lobbyist" means any person who is engaged for pay or other consideration for the purpose of attempting to influence legislative or administrative action of the city. *(Reso. 83-357)*

ARTICLE XII - RECALL AND IMPEACHMENT

CHAPTER 1 - RECALL OF ELECTED OFFICERS

Section 12-101. Recall of the Mayor –

The mayor may be removed by recall which shall be initiated upon petition signed by duly registered voters equal in number to at least ten percent of the total voters registered at the last regular mayoral election. Signatures from any one council district, as provided by this charter for the election of councilmembers, in excess of forty percent of the total number required on the petition shall not be counted. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 15 and 32A(9))*

Section 12-102. Recall of a District Councilmember –

A district councilmember may be removed by recall which shall be initiated upon petition signed by duly registered voters of the council district equal in number to at least ten percent of the total voters registered in such councilmember's district in the last regular council election held in the district. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 15 and 32A(4))*

Section 12-103. Recall Petition; Recall Election –

The recall petition shall require each signing voter's signature, address, council district, and the date of signing. Signatures on a recall petition may be on separate sheets but each sheet shall have appended to it the affidavit of the person who circulated that sheet of the petition, that to the best of the affiant's knowledge and belief the persons whose signatures appear on the sheet are duly

registered voters of the city, that they signed with full knowledge of the contents of the petition, and that their residences are correctly given.

A recall petition shall be tendered in its entirety for filing with the city clerk with a transmittal letter to the city clerk. Upon filing of such petition with the city clerk, the city clerk shall examine it to determine whether it contains a sufficient number of apparently genuine signatures of registered voters. The city clerk may question the genuineness of any signature or signatures appearing on the recall petition and if the city clerk finds that any such signature or signatures are not genuine, the city clerk shall disregard them in determining whether the petition contains a sufficient number of signatures. The city clerk shall also disregard any signature dated more than sixty days before the petition was tendered for filing. The city clerk shall eliminate any sheet of the petition which is not accompanied by the required affidavit of the person who circulated that sheet of the petition. The invalidity of any sheet of the petition shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such an invalid sheet. The city clerk shall complete the examination of the petition within twenty working days after the date of the filing with the city clerk and shall thereupon certify the petition or reject the petition.

As soon as the city clerk has certified the recall petition, the city clerk shall notify the elected officer that the examination has been completed and the petition has been certified. Upon receipt of such notice, the elected officer may resign from office and thereupon the recall proceedings shall terminate.

If the elected officer does not resign from office within ten days after notice of the certification of such petition shall have been given to such elected officer, the city clerk shall arrange a recall election. If a general or special city or state election is to be held not less than thirty days nor more than ninety days after the ten days have expired, the recall question shall be placed before the voters at such an election. Otherwise a special recall election shall be fixed for a date not earlier than thirty days nor later than ninety days after ten days have expired. The elected officer may resign at any time prior to the recall election and thereupon the election shall not be held.

The following question shall be presented to each voter in a recall: "Shall (name of elected officer) be recalled and removed from the office of (title of office)?"

If a majority of the registered voters who vote on the question at a recall election shall vote "Yes," the elected officer shall be deemed recalled and removed from office. Otherwise, the said officer shall remain in office.

No person, who has been removed from elected office or who has resigned from such an office after a recall petition directed to the said person has been filed, shall be eligible for election or appointment to any office of the city within two years after said person's removal or resignation.

No recall petition shall be filed against an elected officer within the first or the last year of the officer's term or within six months after an unsuccessful recall election against such officer. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 32A(15) and 32A(16); 2006 General Election Charter Amendment Question No. 12(f); Reso. 10-64)*

Note

Blank ballots are neither a yes nor a no vote "on the question" of recall and may not be considered in determining total vote for purposes of determining majority vote. Republican Party of Hawaii v. Waihee, 68 Haw. 258, 709 P.2d 980 (1985).

Section 12-104. Recall of the Prosecuting Attorney –

The prosecuting attorney may be removed by recall which shall be initiated upon petition signed by registered voters equal in number to at least ten percent of the total voters registered in the last

regular election of the prosecuting attorney. Signatures from any one council district, as provided by this charter for the election of councilmembers, in excess of forty percent of the total number required on the petition shall not be counted. *(1992 General Election Charter Amendment Question Nos. 15 and 32A(13))*

CHAPTER 2 - IMPEACHMENT OF ELECTED OFFICERS

Section 12-201. Impeachment of the Mayor –

The mayor may be impeached for malfeasance, misfeasance or non-feasance in office. The courts of the State of Hawaii shall have jurisdiction as provided by applicable law over any proceeding for the removal of the mayor who may be charged on any of the foregoing grounds. The charges shall be set forth in writing in a petition for impeachment signed by not less than five thousand duly registered voters of the city, and said signatures shall be necessary only for the purpose of filing the petition. The petition having once been filed, hearings shall be held on all such charges. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 14 and 32A(9); Reso. 08-135)*

Section 12-202. Impeachment of a Councilmember –

Any councilmember may be impeached for malfeasance, misfeasance or non-feasance in office or for interference with the performance of the duties of any officer or employee in any executive agency of the city government. The courts of the State of Hawaii shall have jurisdiction as provided by applicable law over any proceeding for the removal of a councilmember who may be charged on any of the foregoing grounds. The charges shall be set forth in writing in a petition for impeachment signed by not less than one thousand duly registered voters of the council district for the removal of a councilmember, and said signatures shall be necessary only for the purpose of filing the petition. The petition having once been filed, hearings shall be held on all such charges. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 14 and 32A(4); Reso. 08-135)*

Section 12-203. Impeachment of the Prosecuting Attorney –

The prosecuting attorney may be impeached for malfeasance, misfeasance or non-feasance in office. The courts of the State of Hawaii shall have jurisdiction as provided by applicable law over any proceeding for the removal of the prosecuting attorney who may be charged on any of the foregoing grounds. The charges shall be set forth in writing in a petition for impeachment signed by not less than five hundred duly registered voters of the city, and said signatures shall be necessary only for the purpose of filing the petition. The petition having once been filed, hearings shall be held on all such charges. *(1992 General Election Charter Amendment Question No. 32A(13); cf. Question No. 15; Reso. 08-135)*

ARTICLE XIII - GENERAL PROVISIONS

Section 13-101. Definitions –

1. The term "agency" shall mean any office, department, board, commission or other governmental unit of the city, excluding the council and its offices and any commission excluded by the provisions of this charter.

2. The term "executive agency" shall mean any agency of the executive branch of the city government, excluding the board of water supply.

3. The term "employee" shall mean any person, except an officer, employed by the city or any agency thereof, but the term shall not include an independent contractor.

4. Except as otherwise provided in this charter, the term "officer" shall include the following:
   (a) Members of the council, the mayor, the prosecuting attorney and the managing director.
   (b) Any person appointed as administrative head of any agency of the city or as a member of any board or commission.
   (c) Any person appointed by a board or commission as the administrative head of such agency.
   (d) The first deputy, any other deputy, or a division chief appointed by the administrative head of any agency of the city.
   (e) Deputies of the corporation counsel and the prosecuting attorney.

(Sec. 13-101, RCH 1973; Reso. 94-67 and 96-170)

Section 13-102. Titles, Subtitles; Construction –

Titles and subtitles shall not be used for purposes of construing this charter. *(Reso. 83-357)*

Section 13-103. Boards and Commissions –

Except as otherwise provided by this charter or by law, all boards and commissions established by this charter or by ordinance shall be governed by the following provisions:

(a) To be eligible for appointment to a board or commission, a person shall be a duly registered voter of the city.
(b) All members shall be appointed by the mayor and confirmed by the council.
(c) All appointed members shall serve for staggered terms of five years, and they shall serve until their successors have been appointed and qualified. No person shall serve on the same board for more than two consecutive full terms or for more than ten consecutive years, whichever is greater. The initial appointments shall be as follows:
   (1) Five members: One member each to serve for five, four, three, two, and one year, respectively.
   (2) Seven members: Two members to serve for five years, one member for four years, two members for three years, one member for two years, and one member for one year.
   (3) Nine members: Two members each to serve for five, four, three, and two years, respectively, and one member for one year.

Each succeeding appointment shall be for a term ending five years from the date of the expiration of the term for which the predecessor had been appointed.

(d) Any vacancy occurring other than by expiration of the term of office shall be filled for the remainder of such unexpired term in the same manner as for an original appointment.
(e) Temporary vacancies shall be filled by the mayor as provided by ordinance.
(f) A chair shall be elected annually by members from the membership.
(g) A majority of the members shall constitute a quorum.
(h) All meetings shall be held in city hall or other public places.

(i) The affirmative vote of a majority of the entire membership shall be necessary to take any action, and such action shall be made at a meeting open to the public.
(j) All members shall be entitled to be reimbursed for travelling and other necessary expenses incurred by them in the performance of their official duties.
(k) All appointed members may be compensated for their service as provided by ordinance.
(l) Policies and procedures for the removal of members of boards and commissions shall be as provided by ordinance.

(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 19 and 32A(2); Reso. 96-135)

Note

"Except as otherwise provided by law" does not authorize council to enact an ordinance whose provisions contradict charter provisions; under such circumstances the term "law" does not include ordinances. Fasi v. City Council of the City and County of Honolulu, 72 Haw. 513, 823 P.2d 742 (1992).

Section 13-104. Annual Reports –

1. Not later than ninety days after the close of the fiscal year, each agency of the city shall make an annual written report of its activities to the mayor in such form and under such rules and regulations as the mayor may prescribe.
2. Not later than one hundred eighty days after the close of the fiscal year, the mayor shall publish an annual written report concerning the activities of all agencies of the city. A copy of such report shall be filed in the office of the city clerk.
3. For the purpose of informing the public on the activities of the city during a fiscal year, the mayor may use radio and television media, in addition to the publication of the annual written report.

Section 13-105. Records Open to the Public –

All books and records of the city shall be open to the inspection of any citizen at any time during business hours. Certified copies or extracts from such books and records shall be given by the officer having custody of the same to any person demanding the same and paying or tendering a reasonable fee to be fixed by the council for such copies or extracts, but the records of the police department or of the prosecuting attorney shall not be subject to such inspection unless permission is given by the chief of police or the prosecuting attorney, except in the case of traffic accidents where such records, including all statements taken, shall be available for inspection by the parties directly concerned in such accident, or their duly licensed attorneys acting under written authority signed by either party. Any person who may sue because of death resulting from any such accident shall be deemed a party directly concerned.

Note

Public interest in preservation of confidentiality and secrecy may be sufficient reason for insulation of police or other governmental records from discovery in special, individual cases, but claims of privilege for such records on this basis require documentation and argument by the governmental agency asserting the privilege, and subsequent judicial evaluation of the claim of privilege. Tighe v. City and County of Honolulu, 55 Haw. 420, 520 P.2d 1345 (1974); see also Hawaii Revised Statutes Chapter 92F, Information Practices.

Section 13-106. Public Hearings; Notice –

1. No public hearing shall be held by any agency or the council, unless public notice is given prior to such hearing.

2. Notice of any public hearing shall be adequately publicized at least ten days prior to such hearing via an electronic medium, such as the Internet, and in a daily newspaper of general circulation in the city and may be advertised, as deemed helpful, in such other newspapers and through communications media as will afford the public maximum information concerning such hearing. The notice shall include:

(a) The date, time and place of such hearing.

(b) A statement in plain language of the nature or purpose, including the issues involved, if any, of such hearing.

(c) A statement that all interested persons shall be afforded the opportunity of being heard.

(2006 General Election Charter Amendment Question No. 12(g))

Section 13-107. Title to Property –

Except as otherwise provided by law, title to all property acquired by any agency of the city shall be vested in the city.

Section 13-108. Facsimile Signatures –

Whenever any person is required to sign negotiable instruments or multiple bonds, the signature may be a facsimile.

Section 13-109. Payment of Moneys Out of the City Treasury –

All disbursements of city controlled funds shall be made pursuant to procedures prescribed by the director of budget and fiscal services. *(1998 Reorganization)*

Section 13-110. Expenses –

Except as otherwise provided in this charter and subject to procedures prescribed by the director of budget and fiscal services and approved by the mayor, all officers and employees of the city shall be entitled to their travelling or other necessary expenses incurred in the performance of their official duties. *(1998 General Election Charter Amendment Question No. 2(VIII))*

Section 13-111. Claims –

No action shall be maintained for the recovery of damages for any injury to persons or property by reason of negligence of any official or employee of the city unless a written statement, stating fully when, where and how the injuries occurred, the extent thereof and the amount claimed therefor, has been filed with the corporation counsel within six months after the date the injury was sustained. *(1992 General Election Charter Amendment Question No. 32A(5))*

Note

Statutory provision for two-year statute of limitations for tort claims takes precedence over charter notice of claim requirements. Salavea v. City and County of Honolulu, 55 Haw. 216, 571 P.2d 51 (1973).

Section 13-112. Declaration of Emergencies –

The mayor may declare an emergency due to a public calamity, but the mayor's failure or refusal to make such a declaration shall not preclude the council from finding that an emergency exists under the provisions of Section 3-202 of this charter. *(Reso. 83-357)*

Section 13-113. Acceptance of Gifts or Donations –

The council, on behalf of the city, may accept gifts or donations of money, securities or other personal property or of real estate or any interest in real estate.

Section 13-114. Oaths, Attendance of Witnesses and Production of Documents –

Every officer or agency of the city authorized to hold hearings or to conduct investigations shall have power to administer oaths and to issue subpoenas to compel the attendance of witnesses and the production of documents. If any person, subpoenaed as a witness or to produce any books or papers called for by the process of the investigating body, shall fail or refuse to respond thereto or refuse to answer questions propounded by any member of the investigating body or its counsel, material to the matter pending before such body, the proper court, upon request of the investigating body shall have power to compel obedience to any process of such body and require such witness to answer questions put to such person as aforesaid and to punish, as a contempt of the court, any refusal to comply therewith without good cause shown therefor. *(Reso. 83-357)*

Note

To the extent Honolulu Charter Section 13-114 grants the county prosecutor subpoena powers broader than or inconsistent with the subpoena powers authorized in HRS Section 28-2.5, Honolulu Charter Section 13-114 is invalid. Marsland v. First Hawaiian Bank, 70 Haw. 126, 764 P.2d 1228 (1988).

Section 13-115. Fines and Penalties –

Except as otherwise provided in this charter, the council by ordinance may provide for the punishment of violations of any provisions of this charter, of ordinances or of rules and regulations by civil fines, either administratively or judicially imposed, or criminal prosecution. No criminal penalty shall exceed the amount of $2,000.00 or one year's imprisonment, or both. Criminal prosecutions shall be as provided by law for the prosecution of misdemeanors. *(Reso. 88-241, 1992 General Election Charter Amendment Question No. 30)*

Section 13-116. City Elections –

1. In general: City elections shall be conducted in accordance with the election laws of the state insofar as applicable, but all city elective officers shall be elected by nonpartisan special elections. Except as otherwise provided in this charter, such special elections shall be held in conjunction with the primary and general elections of the applicable year; a special election held in conjunction with the primary election shall be designated the first special election and a special election held in conjunction with the general election shall be designated the second special election. In the case of the council, such special elections shall be held in 2002 and every second year thereafter. In the case of the mayor and the prosecuting attorney, such special elections shall be held every fourth year following the 1992 election.
2. Special elections:
   (a) If there is no more than one candidate for any city elective office, then the name of that candidate shall be placed on the ballot for the first special election. The candidate shall

be deemed elected at the first special election regardless of the number of votes received.

(b) If there are only two candidates for any city elective office, the names of the two candidates shall be placed on the ballot for the second special election. At the second special election, the candidate receiving the highest number of votes cast for that office shall be deemed elected.

(c) If there are three or more candidates for any city elective office, the names of the candidates shall be placed on the ballot for the first special election. If any candidate receives a majority of votes cast in the first special election for that office, that candidate shall be deemed elected. However, if no candidate receives a majority of votes cast in the first special election for that office, then the names of the two candidates receiving the highest number of votes cast for that office shall be placed on the ballot for the second special election. At the second special election, the candidate receiving the highest number of votes cast for that office shall be deemed elected.

(1992 General Election Charter Amendment Question Nos. 4 and 32A(6); 1998 General Election Charter Amendment Question No. 8(IV); 2006 General Election Charter Amendment Question No. 6)

Section 13-117. Term of Office of Department Heads –

Except as otherwise provided in this charter, the term of office of department heads shall be coterminous with that of the appointing authority. Pending the appointment of the department head, all deputies shall continue in office until a new department head is appointed, with the highest ranking deputy acting as department head.

Section 13-118. Oaths of Office –

Before entering upon the duties of office, each officer elected or appointed shall subscribe to the following oath or affirmation before some person duly qualified to administer oaths:

"I solemnly swear (or affirm) that I will faithfully support the Constitution and laws of the United States of America, the Constitution and laws of the State of Hawaii and the Charter and laws of the City and County of Honolulu, and conscientiously and impartially discharge my duties as _____ of the City and County of Honolulu."

(Reso. 83-357; 1992 General Election Charter Amendment Question No. 32A(10))

Section 13-119. Dual Offices or Positions –

No person shall hold more than one public office or position under the city, except that city officers and employees shall not be precluded from membership on a neighborhood board. No city officer or employee shall be a member of the state civil service commission, nor shall any city officer or employee hold a public office or position under the federal or state government which would be inconsistent or incompatible with or would tend to interfere with the duties of the city office or position. The term "public office," as used in this section of the charter, shall not include notaries public, reserve police officers or officers of emergency organizations for civilian defense or disaster relief. *(Reso. 77-412; 1992 General Election Charter Amendment Question No. 24)*

Section 13-120. Coordination of Work –

The several agencies of the city shall devise a practical and working basis for cooperation in and coordination of work, eliminating duplication and overlapping of functions and shall, so far as practicable, cooperate with each other in the use of employees, land, buildings, quarters, facilities and equipment. The head of any agency may empower or require an employee of another agency,

subject to the consent of the head of such other agency, to perform any duty which might be required of the employees of the former agency. Whenever, in this charter, power is vested in an agency to inspect, examine or secure data or information or to procure assistance from any other agency, a duty is hereby imposed upon the agency upon which demand is made to render such power effective. *(Reso. 83-357)*

Section 13-121. Cooperation with Other Agencies –

In the performance of its functions, each agency of the city shall cooperate with private agencies and with agencies of the governments of the United States, the state and any state and with any of their political subdivisions having similar functions.

Section 13-122. Receipt and Use of Federal Allotments of Money –

1. If any provision of this charter jeopardizes the receipt by the city of any federal grant-in-aid or other federal allotment of money, such provision may, insofar as such fund is jeopardized, be waived by the council, after public hearing, upon recommendation of the mayor.

2. Real property may be purchased in the name of the city through the use of any federal grant-in-aid or other federal allotment of money received for such purpose, upon recommendation of the mayor and approval of the council. Except as provided for in Section 6-1511.3 of this charter, any provision of this charter which jeopardizes such purchase may, insofar as such purchase is jeopardized, be waived by the council, after public hearing, upon recommendation of the mayor. *(Reso. 90-295 and 95-205; 1998 General Election Charter Amendment Question No. 1(V); 1998 Reorganization)*

Section 13-123. Severability Clause –

If any part of this charter is for any reason declared unconstitutional or invalid, the other separable parts thereof shall not be affected thereby.

Section 13-124. Public Notices via Electronic Medium –

Whenever a public notice is required by this charter or by ordinance to be published in a daily newspaper, the public notice shall also be distributed via an electronic medium, such as the Internet, within the same timeframe as the newspaper publication. *(2006 General Election Charter Amendment Question No. 12(g))*

ARTICLE XIV - NEIGHBORHOODS AND NEIGHBORHOOD BOARDS

Section 14-101. Neighborhoods and Neighborhood Boards –

Neighborhoods and neighborhood boards to increase and assure effective citizen participation in the decisions of government shall be established in accordance with a neighborhood plan. *(Reso. 84-231)*

Section 14-102. Neighborhood Commission –

There shall be a neighborhood commission which shall consist of nine members chosen from the city at large. The mayor shall appoint four members, at least two of whom shall have served on a neighborhood board for at least one full term. The presiding officer of the council, with the

approval of the council, shall appoint four members, at least two of whom shall have served on a neighborhood board for at least one full term. The ninth member shall be appointed by the mayor and confirmed by the council. The ninth member shall have served on a neighborhood board for at least one full term.

The commission shall elect a chair from among its members. Any vacancy in the commission shall be filled in the same manner as for an original appointment.

The commission shall act by majority vote of its membership and shall establish its own procedures. Commission members shall be compensated and reimbursed for their necessary expenses as provided by ordinance. The council shall appropriate funds to the neighborhood commission necessary for the performance of its official duties.

The terms of members initially appointed shall be for five years, and their successors shall serve for staggered terms of five years in the manner provided in Section 13-103(c) of this charter. *(Reso. 83-357; 1992 General Election Charter Amendment Question No. 25; Reso. 04-18)*

Section 14-103. Powers, Duties and Functions –

The neighborhood commission shall:

(a) Develop, after public hearings, a neighborhood plan which shall be effective upon filing with the city clerk.

(b) Review and evaluate the effectiveness of the neighborhood plan and neighborhood boards and report thereon.

(c) Assist areas of the city in the formation and operation of their neighborhoods and neighborhood boards, upon their request.

Section 14-104. The Neighborhood Plan –

The neighborhood plan shall designate the boundaries of neighborhoods and provide procedures by which registered voters within neighborhoods may initiate and form neighborhoods and the manner of selection of the members of neighborhood boards, their terms of office and their powers, duties and functions.

The plan may be amended by the commission, after public hearings to be held in various areas of the city, and amendments shall become effective upon filing with the city clerk.

Section 14-105. Executive Secretary –

There shall be an executive secretary to the neighborhood commission who shall be appointed by the mayor and confirmed by the council, and may be removed by the mayor. *(Reso. 95-261)*

ARTICLE XV - CHARTER AMENDMENT OR REVISION

Section 15-101. Initiation of Amendments or Revisions –

Except as hereinafter provided, amendments or revisions of this charter may be initiated only in the following manner:

(a) By resolution of the council adopted after three readings on separate days and passed by an affirmative vote of two-thirds of its entire membership at each reading.

(b) By petition filed with the city clerk, signed by duly registered voters equal in number to at least ten percent of the total voters registered in the last regular mayoral election, setting forth

the proposed amendments or revisions. Such petition shall designate and authorize not less than three nor more than five of the signers thereto to approve any alteration or change in the form or language or any restatement of the text of the proposed amendments or revisions which may be made by the corporation counsel.

Such petition shall include each signing voter's signature, residence, and date of signing. Signatures may be on separate sheets, but each sheet shall have appended to it the affidavit of the person who circulated that sheet of the petition, that to the best of the affiant's knowledge and belief the persons whose signatures appear on the sheet are duly registered voters of the city, that they signed with full knowledge of the contents of the petition and that their residences are correctly given.

Such petition shall be filed with the city clerk at least forty-five days before the city first special election preceding the general election of that year. Such petition shall be tendered in its entirety for filing with the city clerk with a transmittal letter to the city clerk. Upon filing of such petition with the city clerk, the city clerk shall examine it to determine whether it contains a sufficient number of apparently genuine signatures of registered voters. The city clerk may question the genuineness of any signature or signatures appearing on the petition, and if the city clerk finds that any such signature or signatures are not genuine, the city clerk shall disregard them in determining whether the petition contains a sufficient number of signatures. The city clerk shall eliminate any sheet of the petition which is not accompanied by the required affidavit of the person who circulated that sheet of the petition. The invalidity of any sheet shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such invalid sheet. The city clerk shall complete the examination of the petition within twenty working days after the date of filing and shall certify the petition or shall reject the petition.

Notwithstanding the foregoing, the corporation counsel, as revisor, may, subject to the provisions of Section 4-202 of this charter, prepare supplements or editions of the charter containing language which reflects an exercise of the reorganization power as prescribed therein. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 15 and 32A(3); 1998 General Election Charter Amendment Question No. 5(II); 2006 General Election Charter Amendment Question No. 12(f); Reso. 10-64)*

Section 15-102. Elections to be Called –

1. Any resolution of the council initiating an amendment or revision to the charter shall provide that the amendment or revision shall be submitted to the electors of the city at the next general election; provided, however, that no such resolution shall be submitted to the electorate at the same general election at which a charter commission presents, or is authorized to present, its own proposals to the electorate in accordance with this article. Any council resolution shall require the approval of the mayor if it is to be submitted to the electors at a general election immediately preceding, or immediately following, a general election at which a charter commission is authorized to submit its own proposals.

2. Any amendment or revision to the charter proposed by petition shall be submitted to the electors of the city at the next general election.

3. Any amendment or revision to the charter proposed by the council or by petition shall be published at length in a daily newspaper of general circulation in the city at least forty-five days prior to its submission to the electors of the city at the next general election. *(1992 General Election Charter Amendment Question No. 9)*

Section 15-103. Approval of Amendment or Revision –

No amendment or revision of this charter shall be effective unless approved by a majority of the voters voting thereon.

Section 15-104. Effective Date of Amendment or Revision –

Any amendment or revision approved by the electors of the city shall become effective at the time and under the conditions specified in the amendment or revision.

Section 15-105. Mandatory Review –

1. After November 1 of every year ending in "4," but before the immediate following February 1, the mayor and the presiding officer of the council shall appoint a charter commission consisting of thirteen members to study and review the operation of the government of the city under this charter. The mayor shall appoint six members; the presiding officer of the council, with the approval of the council, shall appoint six members; and the thirteenth member shall be appointed by the mayor and confirmed by the council.

For the 2005 charter commission, Section 16-127 shall prevail over any conflicting provision of this subsection.

2. The commission shall elect a chair from among its members. Any vacancy in the commission shall be filled in the same manner as for an original appointment, except as otherwise provided under Section 16-127 for the 2005 charter commission. The commission shall act by majority vote of its membership and shall establish its own procedures. The commission shall be recognized as a constituent body, and its members shall not, in any manner, be deemed officers of the city. The commission and its members shall be subject only to provisions of this article, Section 3-114, and Section 3-502 of the charter.

3. The commission may propose amendments to the existing charter or a draft of a revised charter, which shall be submitted to the city clerk at any time prior to September 1 of the year ending in "6" that immediately follows the appointment of the commission. Upon receipt of the amendments or revised charter, together with ballot language prepared by the commission, the clerk shall provide for the submission of such amendments or revised charter to the electors of the city at the next general election.

4. The commission shall publish, not less than forty-five days before any election at which charter amendments or a revised charter are submitted, at least once in a daily newspaper of general circulation within the city, a brief digest of the amendments or revised charter and a notice to the electorate that copies of the amendments or revised charter are available at the office of the city clerk. *(Reso. 83-357; 1992 General Election Charter Amendment Question No. 31; Reso. 02-39 and 04-178)*

Section 15-106. Gender Neutral Language –

Every word in this charter shall extend to and be applied to both genders when it is clear that the charter is not applicable only to members of one sex. In preparing any amendment, supplement, or replacement edition of this charter, the corporation counsel or a duly authorized revisor of charter may add, delete, or substitute words and phrases as appropriate to change any term which refers to the male or female gender to a term which is neutral in gender as long as the meaning or effect of this charter is not changed. *(Reso. 83-357)*

Section 15-107. Administrative Rules –

The city clerk may promulgate administrative rules to implement this chapter. The rules may establish requirements for a petition and may establish a method for examination of a petition by

statistical random sampling examination and provide procedures for challenge of a sampling examination. *(Reso. 10-64)*

ARTICLE XVI - TRANSITION SCHEDULE

Section 16-101. Effective Date of Revisions –

All provisions of the amendments to the charter of the City and County of Honolulu, approved on November 3, 1992, shall become effective as of the second day of January, 1993, except as otherwise provided. *(1992 General Election Charter Amendments, in general)*

Section 16-102. General Plan, Development Plans, and Zoning Ordinances –

The existing general plan of the city shall continue as the general plan of the city, subject to change under the provisions of this revision. Development plans as prescribed herein shall be adopted in accordance with the provisions of this revision at the earliest practicable date consistent with sound planning principles, and until the adoption of a development plan for any area, existing development plans for such area shall be continued in full force and effect. However, the provisions of this revision pertaining to concurrent processing shall apply to existing development plans and zoning ordinances as of the effective date. *(1992 General Election Charter Amendment Question No. 5)*

Section 16-103. Creation of the Department of Wastewater Management –

The provisions relating to the department of wastewater management shall become effective as of the first day of July, 1993. *(1992 General Election Charter Amendment Question No. 6)*

Section 16-104. Service to Continue for Members of Boards and Commissions –

All members of boards and commissions of the city shall continue to hold office for the terms for which they were appointed, whether or not such service extends their service on a particular board beyond two successive full terms or ten successive years. In the event the foregoing limits are exceeded, however, such persons shall cease to serve on the date their term ends and shall not serve pending the appointment and qualification of a successor. *(1992 General Election Charter Amendment Question No. 19)*

Section 16-105. Neighborhood Commission –

All members of the neighborhood commission shall continue to hold office for the terms for which they were appointed. At the first expiration of a term of a member for whom the mayor is the appointing authority, the mayor shall appoint a person who has served as a member of a neighborhood board for at least one full term as provided in Section 14-102, and that person's successors shall be similarly qualified. The same requirements shall apply to the successors of the first council appointee whose term expires; and the same requirements shall apply to the successors of the presently serving member who has been appointed by the mayor and confirmed by the council. *(1992 General Election Charter Amendment Question No. 25)*

Section 16-106. Ordinances Continue in Effect –

All ordinances, resolutions, rules and regulations in force at the time the amendments to the charter of the City and County of Honolulu approved on November 3, 1992, take effect and not in conflict or inconsistent with this revised charter are hereby continued in force until repealed, amended or superseded by proper authority. *(1992 General Election Charter Amendments, in general)*

Section 16-107. Pending Proceedings –

All petitions, hearings and other proceedings pending before any office, department, board or commission abolished by the amendments to the charter of the City and County of Honolulu approved on November 3, 1992, and all legal proceedings and investigations begun by such office, department, board or commission and not completed at the effective dates of these respective charter amendments shall continue and remain in full force and effect and shall be completed before or by the office, department, board or commission which succeeds to the powers and functions of such office, department, board or commission. *(1992 General Election Charter Amendments, in general)*

Section 16-108. Lawful Obligations of the City –

All lawful obligations of the city existing on the effective date of the amendments to the charter of the City and County of Honolulu approved on November 3, 1992, and all fines, taxes, penalties, forfeitures, obligations and rights, due, owing or accruing to the city, and all writs, prosecutions, actions and proceedings by or against the city shall remain unaffected by the adoption of this revised charter. *(1992 General Election Charter Amendments, in general)*

Section 16-109. Inconsistent Provisions of Rules, Ordinances and Laws –

The provisions of all rules, regulations, resolutions, ordinances and laws which are inconsistent with the amendments to the charter of the City and County of Honolulu approved on November 3, 1992, shall be superseded by the provisions of this revised charter at their respective effective dates, except that ordinances which are inconsistent with those provisions of this revised charter that require action by the council to make them effective, shall remain in full force until such action has been taken. *(1992 General Election Charter Amendments, in general)*

Section 16-110. Transfer of Records and Property –

All records, property and equipment whatsoever of any office, division, department, board, commission or agency, the functions of which, or some of the functions of which, are assigned to any other agency by the amendments to the charter of the City and County of Honolulu approved on November 3, 1992, shall be transferred and delivered to the agency to which such functions are assigned. *(1992 General Election Charter Amendments, in general)*

Section 16-111. Status of Present Employees –

No loss of vacation allowance, sick leave and other service credits, retirement benefits or other rights and privileges on the part of any officer or employee of the city shall be caused by the adoption of the amendments to the charter of the City and County of Honolulu approved on November 3, 1992, but nothing contained herein shall be construed to prevent future changes in status pursuant to the civil service provisions of this revised charter. *(1992 General Election Charter Amendments, in general)*

Section 16-112. Status of Department Heads –

Notwithstanding any provision to the contrary, all department heads who have been appointed by the mayor and who are holding office on the effective date of the amendments to the charter of the City and County of Honolulu approved on November 3, 1992, shall continue in office without reappointment until their terms of office expire or until they are removed from office pursuant to the provisions of this revised charter. *(1992 General Election Charter Amendments, in general)*

Section 16-113. Transition Provisions Concerning Fire Commission –

1. The fire chief serving on December 31, 1996 shall remain in office unless removed by the fire commission pursuant to Section 6-1003 of this charter.

2. Should the fire chief vacate or be removed from office before appointment of a fire commission:

(a) The deputy fire chief shall serve as interim fire chief; or

(b) The mayor may commission an interim fire chief.

(Reso. 94-267; 1998 Reorganization)

Section 16-114. Transition Provisions Concerning Dissolution of Public Transit Authority –

1. At the close of June 30, 1997, the public transit authority shall be dissolved and cease to exist. All of the authority's powers, duties, and functions relating to the bus and other transit systems shall be transferred to and assumed by the department of transportation services on July 1, 1997.

2. At the close of June 30, 1997, the term of each non-ex officio director of the public transit authority shall expire.

At the same time, each ex officio director of the authority shall cease service in that capacity.

3. All proceedings pending before or involving the public transit authority on June 30, 1997 shall continue and remain in full force and effect. The proceedings shall be completed or assumed by the department of transportation services or other appropriate department.

4. All lawful obligations between the public transit authority and another person which exist on June 30, 1997 shall be transferred to and assumed by the department of transportation services on July 1, 1997. The obligations shall continue in effect until discharged or lawfully terminated.

All contracts between the public transit authority and another person which are to remain effective after June 30, 1997 shall be transferred to and assumed by the department of transportation services on July 1, 1997. The contracts shall continue in effect until fulfilled or lawfully terminated.

5. All records, property, and equipment held by the public transit authority on June 30, 1997 shall be transferred to and assumed by the department of transportation services on July 1, 1997.

6. All civil service officers and employees holding positions with the public transit authority on June 30, 1997 shall be transferred to the department of transportation services on July 1, 1997. The civil service officers and employees shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the transfer. Nothing in this subsection, however, shall be construed as preventing future changes in status pursuant to the civil service provisions of this charter.

7. If, on July 1, 1997, any ordinance or rule refers to the public transit authority or executive director of the public transit authority, the ordinance or rule shall remain in effect, except that "department of transportation services" and "director of transportation services" shall be substituted for "public transit authority" and "executive director of the public transit authority," respectively. If, however, the ordinance or rule is contrary to this charter, even with the substitutions, the ordinance or rule shall be deemed invalid. *(Reso. 95-205)*

Section 16-115. Transition Provisions Concerning Establishment of Transportation Commission –

From January 2, 1997, the mayor and council may commence appointing the initial members of the transportation commission in the manner specified by Section 6-1704 of this charter. Initial members may be appointed before July 1, 1997, but they shall take office from that date.

Notwithstanding its later effective date, Section 6-1704 of this charter shall be deemed applicable to this section from January 2, 1997. *(Reso. 95-205; 1998 Reorganization)*

Section 16-116. Transition Provisions Concerning Civil Service Officers and Employees of Planning Department –

All civil service officers and employees holding permanent appointments to positions in the planning department on January 1, 1999 shall continue with the department of planning and permitting from January 2, 1999. The civil service officers and employees subject to this section shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the charter amendments of this resolution. Nothing in this section, however, shall be construed as preventing future changes in their status pursuant to the civil service provisions of this charter. *(1998 General Election Charter Amendment Question No. 1(V)(6))*

Section 16-117. Transition Provisions Concerning Civil Service Officers and Employees of Budget Department –

All civil service officers and employees holding permanent appointments to positions in the department of the budget on June 30, 1999 shall continue with the department of budget and fiscal services from July 1, 1999. The civil service officers and employees subject to this section shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the charter amendments of this resolution. Nothing in this section, however, shall be construed as preventing future changes in their status pursuant to the civil service provisions of this charter. *(1998 General Election Charter Amendment Question No. 2(IX))*

Section 16-118. Transition Provisions Concerning Civil Service Officers and Employees of Office of Information and Complaint –

All civil service officers and employees holding permanent appointments to positions in the office of information and complaint on January 1, 1999 shall continue with the department of customer services from January 2, 1999. The civil service officers and employees subject to this section shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the charter amendments of this resolution. Nothing in this section, however, shall be construed as preventing future changes in their status pursuant to the civil service provisions of this charter. *(1998 General Election Charter Amendment Question No. 3(VIII))*

Section 16-119. Transition Provisions Concerning Civil Service Officers and Employees of Municipal Reference and Records Center –

All civil service officers and employees holding permanent appointments to positions in the municipal reference and records center on January 1, 1999 shall continue with the department of customer services from January 2, 1999. The civil service officers and employees subject to this section shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the charter amendments of this resolution. Nothing in this section, however, shall be construed as preventing future changes in their status pursuant to the civil

service provisions of this charter. *(1998 General Election Charter Amendment Question No. 3(IX))*

Section 16-120. Transition Provisions Concerning Conformance of the 1998 Reorganization Adopted by the Mayor and the Council –

Within six months after the effective date hereof, the corporation counsel, acting as revisor of the charter, shall prepare proposed charter language, stylistically compatible with the language of this charter, which reflects the 1998 reorganization which was proposed by the mayor and approved by the council pursuant to Section 4-202, and the corporation counsel shall cause the language reflecting the reorganization to be published in all subsequent versions of the charter. *(1998 General Election Charter Amendment Question No. 5(III))*

Note

See Note to Article VI, supra.

Section 16-121. Transition Provisions Concerning the Term of the Chief of Police –

The chief of police holding office on December 31, 1998 shall serve for a term expiring on December 31, 2003 unless, at an earlier date:

(a) The police commission removes the chief pursuant to Section 6-1603 of this charter; or

(b) The chief otherwise vacates the office.

Upon the office becoming vacant, it shall be filled in accordance with Section 6-1603 of this charter. *(1998 General Election Charter Amendment Question No. 6(IV); 1998 Reorganization)*

Section 16 122. Transitional Provisions on the Staggering of Councilmembers' Terms –

1. The staggering of the terms of councilmembers shall commence on January 2, 2003 and be implemented in accordance with this section.

2. On January 3, 2001, the city clerk shall certify the total votes counted for all mayoral candidates in the special election at which the mayor was elected for the regular term commencing January 2, 2001. The city clerk shall transmit the certificate to the council chair and maintain in the clerk's office a copy available for public inspection during normal business hours.

(a) If the total votes counted, as certified by the city clerk, is an odd number, the councilmembers for council districts I, III, V, VII, and IX shall be elected to four-year regular terms commencing on January 2, 2003. Councilmembers for other districts shall be elected to two-year regular terms commencing on the same date.

(b) If the total votes counted, as certified by the city clerk, is an even number, the councilmembers for council districts II, IV, VI, and VIII shall be elected to four-year regular terms commencing on January 2, 2003. Councilmembers for other districts shall be elected to two-year regular terms commencing on the same date.

For the purpose of this subsection, a "vote counted" for a mayoral candidate shall not include ballots which are blank, spoiled or otherwise invalid in connection with the mayoral contest. "Special election at which the mayor was elected for the regular term commencing January 2, 2001" means either the first or second special election, held in conjunction with the 2000 primary or general election, at which a candidate for mayor was elected for the term commencing January 2, 2001. The phrase does not mean both the first and second special elections if a second special election was held.

3. After the expiration of the two-year regular terms established by this section, the subsequent regular terms of the pertinent councilmembers shall be subject to Section 3-102.

4. Except as provided in the next paragraph, a person elected as councilmember to a two-year regular term in 2002 shall be eligible for election to two more consecutive four-year terms as councilmember.

A person elected as councilmember to a four-year regular term in 1998 and a two-year regular term in 2002 shall be eligible for election in 2004 to a four-year regular term as councilmember. Such a person, however, shall not be eligible for election in 2008 to a four-year regular term as councilmember.

A person elected as councilmember to two consecutive four-year regular terms in 1994 and 1998 shall not be eligible in 2002 for election as councilmember. *(1998 General Election Charter Amendment Question No. 8(V))*

Section 16-123. Transition Provisions Concerning the Transfer of Audit Functions to the Office of City Auditor –

1. All lawful obligations and liabilities owed by or to the office of council services relating to financial and performance audits on June 30, 2003 shall remain in effect on July 1, 2003. The obligations and liabilities shall be assumed by the office of the city auditor.

All contracts held by the office of council services relating to financial and performance audits, which are to remain effective after June 30, 2003, shall be assumed by the office of the city auditor. The contracts shall continue in effect until fulfilled or lawfully terminated.

All financial and performance audit activities administered by the office of council services on June 30, 2003 shall be assumed by the office of the city auditor on July 1, 2003.

2. On July 1, 2003, all records, data, and information held by the office of council services relating to financial and performance audits which have not been completed as of June 30, 2003 shall be transferred to the office of the city auditor.

3. The assistant legislative auditor position and the employee occupying the position in the office of council services on June 30, 2003 shall continue with the office of the city auditor on July 1, 2003. The employee shall continue service without any loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the charter amendments of this resolution. Nothing in this subsection, however, shall be construed as preventing future changes in the employee's status pursuant to the city auditor's powers with respect to personnel in the office of the city auditor. *(Reso. 02-39)*

Section 16-124. Neighborhood Commission Transition Provisions --

1. For the purpose of this section:

"Compliance with this Charter amendment" means having on the neighborhood commission (1) at least two of the council's appointees with service of at least one full term on a neighborhood board and (2) at least two of the mayor's unilateral appointees with service of at least one full term on a neighborhood board.

"Council's appointees" means members of the neighborhood commission who are appointed by the council presiding officer, with the approval of the council.

"Effective date" means the effective date of this Charter amendment.

"Mayor's unilateral appointees" means members of the neighborhood commission who are appointed by the mayor without confirmation by the council.

2. This Charter amendment shall not affect the term of any member of the neighborhood commission who is serving on the effective date. Unless vacating office sooner, each such member shall continue in service on the commission until the expiration of the member's term or appointment of a successor.

3. If, on the effective date, the mayor's unilateral appointees are not in compliance with this Charter amendment, the mayor shall make appointments to fill vacancies and new terms so that the mayor's unilateral appointees will come into compliance as soon as possible.

If, on the effective date, the council's appointees are not in compliance with this Charter amendment, the council's presiding officer and council shall respectively make and approve appointments to fill vacancies and new terms so that the council's appointees will come into compliance as soon as possible. *(Reso. 04-18)*

Section 16-125. Applicability of Provisions Concerning Temporary Replacement of Councilmember –

Section 3-124 shall apply if a councilmember is called to active military duty before, on, or after the effective date of that Section. *(Reso. 04-113)*

Section 16-126. 2004 Council-Initiated Charter Amendments –

The provisions of subsection 15-102.1 requiring any resolution of the council initiating an amendment of the charter to be approved by the mayor in order to be submitted to the electorate at the general election immediately preceding the general election at which a charter commission is authorized to submit its own proposals shall not apply to the charter amendment resolutions of the council that are submitted to the electorate at the 2004 general election. *(Reso. 04-178)*

Section 16-127. 2005 Charter Commission –

1. Except as otherwise provided by this section, the mayor and the presiding officer of the council, with the approval of the council, shall appoint the members of the 2005 charter commission in accordance with section 15-105 no later than December 1, 2004.

For the purpose of this section:

(a) "Incoming mayor" means the mayor taking office at noon of January 2, 2005;
(b) "Outgoing mayor" means the mayor leaving office at 11:59 a.m. on January 2, 2005; and
(c) "Thirteenth member" means the member of the 2005 charter commission who is suppose to be appointed by the mayor and confirmed by the council.

2. If the outgoing mayor does not appoint by December 1, 2004 a member to the 2005 charter commission who the outgoing mayor may appoint without council confirmation, neither the outgoing mayor nor incoming mayor shall appoint such member to the commission. Instead, the council shall appoint before February 1, 2005 such member without necessity of mayoral approval.

3. The outgoing mayor shall send to the council the nomination of a person to serve as the thirteenth member as soon as possible. If a person nominated by the outgoing mayor is rejected by the council, the outgoing mayor may nominate a replacement until someone is confirmed by the council.

If no person nominated by the outgoing mayor is confirmed before noon of January 2, 2005, then the incoming mayor shall send to the council the nomination of a person to serve as the thirteenth member as soon as possible. If a person nominated by the incoming mayor is rejected by the council, the incoming mayor may nominate a replacement until someone is confirmed by the council.

4. A vacancy on the 2005 charter commission shall be filled by the appointing authority who made the original appointment; except that:

(a) If the original appointment was made by the outgoing mayor, the vacancy shall be filled by the mayor serving on the date the vacancy occurs; and
(b) If the original appointment was supposed to have been made by the mayor, but instead

was made by the council pursuant to subsection 2, the vacancy shall be filled by the mayor serving on the date the vacancy occurs.

(Reso. 04-178)

Section 16-128. Effective Date of Revisions –

All provisions of the amendments to the charter of the City and County of Honolulu, approved on November 7, 2006, shall become effective as of the second day of January 2007, except as otherwise provided. *(2006 General Election Charter Amendments, in general)*

Section 16-129. Transition Provisions Concerning the Establishment of the Honolulu Authority for Rapid Transportation –

1. All civil service officers and employees holding positions with the rapid transit division, department of transportation services, on June 30, 2011, shall be transferred to the Honolulu Authority for Rapid Transportation on July 1, 2011. The civil service officers and employees shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the transfer. Nothing in this subsection, however, shall be construed as preventing future changes in status pursuant to the civil service provisions of this charter.

2. All lawful obligations and liabilities owed by or to the City and County of Honolulu relating to the city's fixed guideway mass transit system on June 30, 2011 shall remain in effect on July 1, 2011. The obligations and liabilities shall be assumed by the authority.

3. All records, property, and equipment whatsoever of any office, division, department, board, commission, authority, or agency, the functions of which, or some of the functions of which, are assigned to any other agency by the amendments to this charter approved on November 2, 2010, shall be transferred and delivered to the agency to which such functions are assigned. *(Reso. 09-252)*

Revision note

Text inserted based upon Resolution No. 09-252, CD1, to address citation error.

Section 16-130. Transition Provisions for Liquor Administrator and Deputy Liquor Administrator –

1. The civil service positions of the liquor administrator and of the deputy liquor administrator of the liquor commission shall be abolished as of the end of the day, June 30, 2011.

2. Effective July 1, 2011, the positions of the liquor administrator and the deputy liquor administrator shall be established in the liquor commission and shall be exempt from civil service.

3. An employee holding a permanent civil service appointment on June 30, 2011 to the position of the liquor administrator of the liquor commission or to the position of deputy liquor administrator shall be afforded such rights under civil service rules as are applicable to those whose civil service position has been abolished. Nothing in this section shall be construed as disqualifying such individuals from appointment after June 30, 2011 to the position of liquor administrator or deputy liquor administrator.

4. The liquor commission may select an individual for the exempt civil service position of liquor administrator prior to July 1, 2011, but the appointment to such position shall not take effect until July 1, 2011 or thereafter. *(Reso. 09-357)*

Section 16-131. Transition Provisions Concerning the Transfer of Duties and Functions of the storm water quality branch –

Effective on July 1, 2015, the duties, and functions of the department of environmental services relating to its storm water quality branch shall be transferred to and assumed by the department of facility maintenance.

1. All civil service officers and employees holding positions or functions in the storm water quality branch within the department of environmental services, shall be transferred to the department of facility maintenance effective on July 1, 2015. The civil service officers and employees shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the transfer. Nothing in this subsection, however, shall be construed as preventing future changes in status pursuant to the civil service provisions of this charter.

2. All lawful obligations, liabilities, permits, and contracts of the city which relate to the duties and functions of the storm water quality branch, and which are administered by the department of environmental services, shall be transferred to and thereafter be administered by the department of facility maintenance, effective on July 1, 2015. The obligations, liabilities, and contracts transferred shall continue in effect until discharged or lawfully terminated.

3. All records, property, and equipment utilized by the storm water quality branch in carrying out its duties and functions shall be transferred to and assumed by the department of facility maintenance, effective on July 1, 2015.

4. Notwithstanding the foregoing, the city shall obtain any required approvals from the State or Federal government for the transfer of duties with respect to the city's storm water National Pollution Discharge Elimination permit, and the transfer effective dates set forth above may be delayed until all such necessary approvals have been obtained. *(Reso. 15-10, CD1)*

ARTICLE XVII - PUBLIC TRANSIT AUTHORITY

Section 17-101. Organization –

There shall be a public transit authority, to be known as the "Honolulu Authority for Rapid Transportation," consisting of a board of directors, executive director, and the necessary staff. *(Reso. 09-252)*

Section 17-102. Definitions –

For the purposes of this article:

"Authority" shall mean the governmental unit known as the "Honolulu Authority for Rapid Transportation."

"Board" shall mean the policy-making body, consisting of ten members of the board of directors, nine voting members and one non-voting member.

"Executive director" shall mean the executive director of the public transit authority. *(Reso. 09-252)*

Section 17-103. Powers, Duties, and Functions –

1. The public transit authority shall have authority to develop, operate, maintain and expand the city fixed guideway system as provided in this article.

2. To perform its duties and functions, the transit authority shall have the following general powers:

(a) To make and execute contracts, project labor agreements and other instruments requiring execution by the authority on such terms as the authority may deem necessary and convenient or desirable with any person or entity in the execution and performance of its powers, duties and functions.

(b) To acquire by eminent domain, purchase, lease or otherwise, in the name of the city, all real property or any interest therein necessary for the construction, maintenance, repair, extension or operation of the fixed guideway system; provided, however that prior to commencing such action, the authority shall submit to the council, in writing, a list of the parcels and areas to be acquired. The authority shall have the right to proceed with such condemnation action so long as the council does not adopt a resolution objecting to the condemnation within 45 days of such notification. Alternatively, after receipt of the notice from the authority, the council may approve, upon a single reading of a resolution, such acquisition by eminent domain.

(c) To recommend to the council the sale, exchange or transfer of real property or any interest therein which is under the control of the authority. The council shall take no action to dispose of such property without the written approval of the authority, and all proceeds from the disposition shall be deposited into funds of the authority or fixed guideway system.

(d) To direct the planning, design, and construction of the fixed guideway system and operate and maintain the system thereafter.

(e) To establish all fares, fees, and charges for the fixed guideway system.

(f) To maintain proper accounts in such manner as to show the true and complete financial status of the authority and the results of management and operation thereof.

(g) To prepare annual operating and capital budgets for the fixed guideway system and the authority.

(h) To make and alter policies for its organization and internal administration.

(i) To create or abolish positions within the authority and establish a pay plan for those persons holding positions in the position classification plan in accordance with Section 6-1109 of this charter.

(j) To make temporary transfers of positions between subdivisions of the authority.

(k) To adopt rules in accordance with state law, when necessary, to effectuate its functions and duties.

(l) To enter into agreements with any public agency or private entity as it deems proper, including agreements for the joint use or operation of transit facilities with agencies of the city.

(m) To have full and complete control of all real and personal property used or useful in connection with the fixed guideway system, including all materials, supplies, and equipment.

(n) To promote, create and assist transit oriented development projects near fixed guideway system stations that promote transit ridership, and are consistent with the intent of the adopted community plans and zoning.

(o) To apply for and receive and accept grants of property, money and services and other

assistance offered or made available to it by any person, government or entity, which it may use to meet capital or operating expenses and for any other use within the scope of its powers, and to negotiate for the same upon such terms and conditions as the authority may determine to be necessary, convenient or desirable.

(p) In addition to the general powers under this subsection, other general or specific powers may be conferred upon the authority by ordinance, so long as the powers are consistent with this article of the charter.

3. The board shall:
   (a) Have the authority to issue revenue bonds under the name of "Honolulu Authority for Rapid Transportation" in accordance with HRS Chapter 49, subject to council approval.
   (b) Review, modify as necessary, and adopt annual operating and capital budgets submitted by the executive director of the authority.
   (c) Appoint and may remove an executive director, who shall be the chief executive officer of the public transit authority. The qualifications, powers, duties, functions, and compensation of the executive director shall be established by the board.
   (d) Evaluate the performance of the executive director at least annually; and submit a report thereon to the mayor and the council.
   (e) Review, modify as necessary, and adopt a six-year capital program within six months of the creation of the authority and annually update the six-year capital program, provided that such capital programs shall be submitted by the executive director.
   (f) Have the authority to enter into such arrangements and agreements for the joint, coordinated or common use with any other public entity or utility owning or having jurisdiction over rights-of-way, tracks, structures, subways, tunnels, stations, terminals, depots, maintenance facilities, and transit electrical power facilities.
   (g) Determine the policy for the planning, construction, operation, maintenance, and expansion of the fixed guideway system. Except for purposes of inquiry or as otherwise provided in this article, neither the board nor its members shall interfere in anyway with the administrative affairs of the authority.
   (h) Prescribe and enforce rules and regulations having the force and effect of law to carry out the provisions of this article of the charter.
   (i) Submit an annual report to the mayor and council on its activities.
   (j) In addition to the general powers under this subsection, other general or specific powers may be conferred by ordinance upon the board, so long as the powers are consistent with this article of the charter.

(Reso. 09-252)

Section 17-104. Powers, Duties and Functions of the Executive Director –

The executive director shall:

(a) Administer all affairs of the authority, including the rules, regulations and standards adopted by the board.
(b) Have at least five years of fixed guideway system experience.
(c) Sign all necessary contracts for the authority, unless otherwise provided by this article.
(d) Recommend to the board the creation or abolishment of positions.
(e) Enforce the collection of fares, tolls, rentals, rates, charges and other fees.
(f) Prepare payrolls and pension rolls.
(g) Maintain proper accounts in such manner as to show the true and complete financial status of the authority and the results of management and operation thereof.

(h) Prepare annual operating and capital budgets.
(i) Prepare and maintain a six-year capital program.
(j) Prescribe rules and regulations as are necessary for the organization and internal management of the authority.
(k) Recommend rules and regulations for adoption by the board.
(l) Request, and accept appropriations from the city, and request and accept grants, loans and gifts from other persons and entities.
(m) Administer programs promoting appropriate developments near transit stations, including compilation of city incentive programs.
(n) Review development projects having significant impact on the operation of the fixed guideway system.
(o) Plan, administer and coordinate programs and projects of the fixed guideway system that are proposed to be funded, wholly or partially, under federal or state law and required to be transmitted to the Oahu metropolitan planning organization.
(p) Attend all meetings of the board unless excused.
(q) In addition to the general powers under this section, other general or specific powers may be conferred upon the executive director by ordinance, so long as the powers are consistent with this article of the charter.

(Reso. 09-252)

Section 17-105. Board of Directors –

1. The board shall:
   (a) Be the policy making body of the authority;
   (b) Be responsible for establishing policies for the development, operation, and maintenance of the public transit system; and
   (c) Perform other duties and functions assigned to it or to the authority by ordinance in accordance with Section 17-103.3(j).

The board shall consist of ten members, nine voting members and one non-voting member. All members shall serve part-time. The board shall be governed by the provisions of Section 13-103 of this charter, except that subsections (b) and (e) shall not apply and as otherwise provided herein.

2. Appointed members. There shall be seven appointed members. The mayor shall appoint three members. The council shall appoint three members. The six appointed and two ex officio voting members shall appoint, by majority vote, a ninth member.

The initial appointments of the seven appointed members shall be as follows: One member from each mayoral or council appointment shall be designated to serve a five-, four-, and three-year term. The ninth member appointed by the voting members shall serve a two-year term.

3. Ex officio members. The state director of transportation and the city director of transportation services shall be ex officio voting members of the board. The director of the department of planning and permitting shall be the ex officio non-voting member of the board. The ex officio members of the board shall not be subject to any term limit. *(Reso. 09-252)*

Section 17-106. Rates, Revenues and Appropriations –

The board shall fix and adjust reasonable rates and charges for the fixed guideway system so that the revenues derived therefrom, in conjunction with revenues received from the general excise and use tax surcharge, from the federal government, and from the revenue-generating properties of the authority, shall be sufficient or as nearly sufficient as possible, to support the fixed guideway system and the authority. The authority shall submit a line-item appropriation request for each of its

proposed operating and capital budgets for the ensuing fiscal year to the council through the office of the mayor by December 1st of each year. The office of the mayor shall submit the authority's line-item appropriation requests without alteration or amendment. The council shall, with or without amendments, approve the authority's appropriation requests. *(Reso. 09-252)*

Section 17-107. Public Hearings –

The board shall hold public hearings prior to fixing and adjusting rates and adopting a proposed budget. *(Reso. 09-252)*

Section 17-108. Receipt and Disbursement of Funds –

The authority shall make its own collections, but all receipts shall be paid daily into the city treasury and maintained in a fund separate and apart from any other funds of the city.

All moneys expended by the authority shall be disbursed with the written approval of the authority according to the procedures prescribed by the director of budget and fiscal services.

The authority shall have management and control over the moneys made available to the authority in the special transit fund established to receive the county surcharge on state tax.

The authority shall have the authority to receive and expend federal funds authorized for the planning, construction, and operation and maintenance of fixed guideway system projects. *(Reso. 09-252)*

Section 17-109. Bond Sales –

All bond sales shall be subject to council approval. At the request of the authority, the council may, by resolution, approve and the director of budget and fiscal services, when so directed by the board, shall sell such bonds for the acquisition, construction, replacement, rehabilitation, approved extensions or completion of the fixed guideway system in accordance with the procedures prescribed by law for such sales. The proceeds from such sales shall be kept by the director of budget and fiscal services in a separate fund to be used only for the purposes for which the bonds are sold. *(Reso. 09-252)*

Section 17-110. Personnel; Purchasing –

1. Subject to the availability of funds and the creation of positions by and authorization from the board, the executive director may hire personnel necessary to perform the duties and functions of the public transit authority.
2. The authority shall be subject to the civil service provisions of this charter.
3. The authority shall be subject to the centralized purchasing and disposal of personal property provisions of this charter.
4. Pensions for officers and employees shall be governed by law. *(Reso. 09-252)*

Section 17-111. Audits –

1. The accounts and financial status of the authority shall be examined annually by a certified public accountant whose services shall be contracted for by the board and whose fees shall be paid as an expense of the authority. The result of such examination shall be reported to the board, the council and the mayor.
2. The authority shall come within the purview of the performance audit conducted by the managing director and such audits as may be required by the council or conducted by the city auditor. *(Reso. 09-252)*

Section 17-112. Legal Counsel –

The corporation counsel of the city shall be the legal adviser of the authority and shall institute and defend, as the board may require, any and all actions involving matters under the jurisdiction of the authority. The corporation counsel may, with the prior approval of the board, compromise, settle or dismiss any claim or litigation, for or against the authority.

The compensation for such legal work shall be as agreed upon by the board and the council and shall be paid from the revenues of the authority.

The authority may employ an attorney to act as its legal adviser and to represent the authority in any litigation to which the authority is a party. *(Reso. 09-252)*

Section 17-113. Service of Process; Claims –

The authority may sue and be sued under the name of the "Honolulu Authority For Rapid Transportation, City and County of Honolulu." Service of process in all matters affecting the authority or any property under its jurisdiction may be made by service upon any member of the board or on the executive director. Any action commenced or prosecuted for the recovery of damages for any injury to persons or property by reason of negligence of the board or of any agents or employees of the authority, shall be commenced and prosecuted against the authority. No action shall be maintained for the recovery of damages unless a written statement verified by oath of claimant, setting forth the nature and items of the claim and the time and place where the alleged injury occurred, has been filed with the authority within two years after the date of sustaining the injury. *(Reso. 09-252)*

Section 17-114. Transit Fund –

There shall be established a special fund into which shall be transferred the county surcharge on state tax and all revenues generated by the fixed guideway system, including interest earned on the deposits and all other receipts dedicated for the fixed guideway system. All moneys collected from the county surcharge on state excise and use tax and received by the city shall be promptly deposited into the special fund. Expenditures from the special fund shall be for the operating or capital costs of the fixed guideway system and for expenses in complying with the Americans with Disabilities Act of 1990 as it may be amended. *(Reso. 09-252)*

Section 17-115. Reserve Funds –

The board may provide for the accumulation of funds for the purpose of financing major replacements, or extensions and additions to the fixed guideway system, the average estimated annual increment to which, for a period of ten years, shall not exceed fifteen percent of the gross revenues of the fixed guideway system of the authority in any fiscal year. *(Reso. 09-252)*

Section 17-116. Performance Bonds –

The board may require an individual or blanket bond in such amount as it shall deem proper for any or all employees, which bond shall be duly conditioned for the faithful performance of duties, and the board may provide that the premium on the bond be paid out of the revenues of the authority. *(Reso. 09-252)*

Section 17-117. Personnel –

The mayor may transfer a civil service position existing on July 1, 2011 within any department to the authority, if the position is necessary for the administration or operation of the authority or the performance of another duty or function assigned to the authority. The civil service employee

holding a permanent appointment in a position that is to be transferred shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the transfer. Nothing in this section, however, shall be construed as preventing future changes in status pursuant to the civil service provisions of this charter. *(Reso. 09-252)*

Section 17-118. Standards of Conduct –

Article XI of the charter shall be applicable to the authority. *(Reso. 09-252)*

Section 17-119. Fixed Guideway Alignments, Extensions and Additions –

The authority shall adhere to the fixed guideway system alignment of the locally preferred alternative approved by the council. Any new alignment, extension or addition to the fixed guideway system alignment shall be subject to council approval by ordinance, except that any adjustment of the alignment necessitated by the impact mitigation shall not constitute a new alignment for purposes of this section. *(Reso. 09-252)*

Section 17-120. Applicability of Charter Provisions –

Except as otherwise provided, no provision of this charter, other than those set forth in this article of the charter, shall be applicable to the authority. *(Reso. 09-252)*

TABLE I
DISPOSITION OF RESOLUTIONS
2002 THROUGH 2012

Resolution Number	1973 Revised Charter of the City and County of Honolulu, 2000 Edition, provisions amended
02-39	3-103, 3-114, 3-121, 3-501 (new Office of City Auditor), 3-502 (new), 3-503 (new), 6-1104, 7-107, 15-105, 16-123 (new)
04-18	14-102, 16-124 (new)
04-113	3-124 (new), 3-104, 16-125 (new)
04-178	15-105, 16-126 (new), 16-127 (new)
2007 Reorganization (07-196)	6-103 (new Department of Emergency Management created to replace the Oahu Civil Defense Agency)
2007 Reorganization (07-196)	6-903, 6-1403
07-223	8-104
07-384	11-106, 11-107
08-135	12-201, 12-202, 12-203
08-166	6-1703
09-252	17-101 through 17-120 (new Public Transit Authority), 6-203, 6-1106, 6-1703, 16-129 (new)
09-336	11-102
09-357	6-207, 6-1103, 16-130 (new)
10-38	5-301 (new Office of Housing), 5-302 (new), 4-104, 6-302, 6-1103, 16-131 (new)
10-64	3-402, 3-403, 3-404, 3-408 (new), 12-103, 15-101, 15-107 (new)
	6-203, 9-301, 9-302

10-110	4-104, 5-301, 5-302, 6-106 (new Office of Housing), 6-302, 6-1103, 16-131
11-47	6-302, 9-205 (new)
12-44	9-202
12-113	6-603

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