3. Prior to the granting of any variance the zoning board of appeals shall hold a public hearing thereon at which interested persons shall be afforded a reasonable opportunity to be heard. Notice of the time and place of the hearing shall be published at least ten days prior to such hearing in a daily newspaper of general circulation in the city.

Act 187, SLH 1959, amending §149-197, RLH 1955, relating to zoning is inconsistent and superseded. Op 59-203.

CHAPTER 6

DEPARTMENT OF CIVIL SERVICE

Chap. 3, RLH 1955, as amended, is no longer applicable to the city except for those provisions relating to position classification and pay. Op 59-50. Act 154, SLH 1959, amending §3-21, RLH 1955, relating to promotions is inconsistent and superseded. Op 59-187. §3-8, RLH 1955, relating to service awards is no longer applicable to the city and county of Honolulu. Op 59-213.

Section 5-601. Organization—There shall be a department of civil service which shall consist of a director of civil service, a civil service commission and the necessary staff. The director shall be the administrative head of the department.

Section 5-602. Statement of Policy—It is hereby declared to be the purpose of this chapter 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 to build a career service which will attract, select, and retain on a merit basis the best qualified civil servants who shall hold their office or position, 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 race, 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.

(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 the individual citizens, to achieve a well trained and productive working force.

Section 5-603. Civil Service and Exemptions—This chapter shall apply to all positions in the service of the city and embraces all personal services performed for the city, except the following:

(a) Positions of officers elected by public vote; positions of heads of departments; position of the clerk; position of the manager of the board of water supply and position of the chief of police.

(b) Positions in the office of mayor, but such positions shall be included in the position classification plan. Employees of the municipal library and of the offices of information and complaint and budget director, other than the heads of such offices, however, shall not be exempted from the provisions of this chapter.

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

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

(e) Positions filled by inmates, patients, or students in city institutions or in the schools.

(f) Positions of district magistrates, jurors, jury commissioners and witnesses.

(g) 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.

(h) Personal services of a temporary nature needed in the public interest where the need for the same does not exceed ninety days, but before any person may be employed to render such temporary service the director of civil service shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable. The employment of any person for service of a temporary nature may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director subject to approval of the civil service commission.

(i) 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 such fact is certified to by the director of civil service.

(j) Positions of temporary election clerks in the office of the city clerk employed during the election periods, but the positions filled by such employees shall be included in the position classification plan.

(k) Positions of one first deputy and one private secretary of heads of departments, but positions filled by such persons shall be included in the position classification plan. The first deputy in the department of civil service, however, shall not be exempt from the provisions of this chapter.

The director of civil service shall determine the applicability of this section to specific employment or services.

The position of municipal librarian is exempt from civil service. Op 59-50. Whether paragraph (k) is applicable to the position of civil service secretary is to be resolved by the personnel

director. Op 59-50. The director must classify a position as private secretary to a department head before the position becomes exempt from civil service. Op 59-50. Employees of the library, except for the head, will be in civil service. Op 59-64. The positions of the head of the office of information and complaint, the librarian and the budget director are exempt from civil service, but the pay will be determined according to the compensation law of the state. Op 59-84. The director of rent control will be in civil service. Op 59-84. The salary of the managing director is set pursuant to §6-101 of charter. Op 59-84. All positions in the office of information and complaint other than that of the head are in civil service. Op 59-101. The first deputy of the controller's office upon transfer to the office of the budget director will be in civil service. Op 59-108. A civil service employee who accepts a position as chauffeur to the mayor may not retain his civil service status. Op 59-162. Employees of the council will be in civil service. Op 59-163. Act 156, SLH 1959, amending §4-4, RLH 1955, relating to compensation is not superseded. Op 59-204.

Section 5-604. Director of Civil Service—The director of civil service 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. He shall be appointed by the mayor and may be removed only for cause after being given a written statement of the charges against him and a hearing before the council thereon, if he so requests. The director shall be the head of the department of civil service. He 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 regulations authorized by this charter.

Upon adoption of the charter the personnel director must be reappointed. Op 59-50.

Section 5-605. 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 5-606. Classification—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 5-607. Appeals—

1. Any person aggrieved by any action of the director of civil service or who has been suspended, demoted or dismissed may appeal to the civil service commission for redress pursuant to its 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.

Section 5-608. Position Classification Plan; Compensation—Except as provided by Section 5-603, 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 the compensation law of the territory.

The head of the office of information and complaint, the librarian, the budget director and the director of rent control will be within the position classification plan. The managing director, however, will not be within the position classification plan. Op 59-84.

Note: Act 238, SLH 1959, as amended by Act 7, SS 1959, relates to compensation for overtime work.

Section 5-609. Civil Service Commission—

1. *Membership, Term and Appointment.* The civil service commission shall consist of five members, who shall be in sympathy with and who shall believe in the principles of the merit system in public employment. They shall be appointed by the mayor with the approval of the council for staggered terms of five years. 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. Each member shall serve until his successor has been appointed and qualified. Any vacancy occurring other than by expiration of a term of office shall be filled for the remainder of the term in the same manner as for an original appointment. Not more than three members of the commission shall belong to the same political party. The commission shall select a chairman from its membership annually. The affirmative vote of a majority of the entire membership shall be necessary to take any action.

2. *Powers, Duties and Functions.* The civil service commission shall have power and shall be required to:

(a) Advise the mayor and the director of civil service 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 each year, its findings, conclusions and recommendations. The commission may appoint a master and invest him with power to conduct such investigations and report thereon to the commission.

(d) Hear appeals. The commission may appoint a master and invest him with power to hear such appeals and report thereon to the commission.

(e) Prescribe regulations to carry out the provisions of this chapter.

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.

4. *Reimbursement of Expenses.* The members of the civil service commission shall receive no compensation but shall be entitled to be reimbursed for travelling and other necessary expenses actually incurred by them in the performance of their duties.

Each member of the commission holding office on July 1, 1959, shall continue in office until his term of office expires. Op 59-50. A commissioner may succeed himself. Op 59-50. Present commissioners will receive no compensation for attending meetings. Op 59-50. The commission may order a master to conduct hearings and to make a recommendation, but it

is not bound to follow the recommendation. Op 59-50. The powers, duties and functions of the commission are as herein prescribed and are not as prescribed in Chap. 3, RLH 1955. Op 59-50. A commissioner who had been absent from a meeting at which action on an appeal has been duly taken, but had been present at the appeal hearing held several days earlier, may move for a reconsideration of the action. Op 59-95. Act 94, SLH 1959, amending §149-86, RLH 1955, relating to general power of the council is not inconsistent. Op 60-54.

Section 5-610. Adoption and Content of Regulations—

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

2. *Content.* The regulation 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 absences, layoffs, 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 qualification 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 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 widows of such persons; and to disabled veterans or to their wives 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 Territory and other political subdivisions may be made.

The prescribing of minimum qualifications does not conflict with this provision. Op 59-50. Note: Act 212, SLH 1959, relates to probationary service in civil service.

Section 5-611. Racial, Religious, or political consideration banned— No person holding any position in the civil service shall be favored or discriminated against on racial, religious or political grounds.

Section 5-612. Prohibitions—

1. *Prohibited Political Activities.*

(a) No person in the civil service shall (1) use his official authority or influence for the purpose of interfering with an election or affecting the result thereof; (2) use his 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 he be removed or otherwise prejudiced for refusing to do so; or (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 Territory 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 as he chooses and to express his opinions 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.

2. *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 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.

(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 nor commit or attempt to commit any fraud preventing the impartial execution of any provision of this chapter and of the 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.

3. *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 unless payroll certification has been made by the director or his authorized agent that the person named therein has been appointed and employed in accordance with the provisions of this chapter and the 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.

(b) If the director of civil service 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.

4. *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 and the regulations in force thereunder. Any sum paid contrary to the provisions of this chapter and the 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 counter-

signed 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 appointed or employed in contravention of any provision of this chapter or of the regulations thereunder who performs service for which he is not paid may maintain an action against the officer or officers who purported so to appoint or employ him 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.

ARTICLE VI

EXECUTIVE BRANCH—MANAGING DIRECTOR AND AGENCIES DIRECTLY UNDER THE MANAGING DIRECTOR

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. He shall be the principal management aide of the mayor. He shall have had at least five years of such training and experience either in public service or private business as shall qualify him to perform the executive duties of his 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 $16,000.00 per annum which shall be subject to change by the council. 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 six months of the effective date of this charter, or within ninety days of the occurrence of any vacancy in the position, unless such periods are 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.

The salary of the managing director will be determined by this provision and not by the position classification plan. Op 59-84. If the mayor desires to have the incumbent management aide to the mayor serve as managing director, the mayor must appoint such person as the managing director. Op 59-84. Act 94, SLH 1959, amending §149-86, RLH 1955, relating to general power of the council is not inconsistent. Op 60-54.

Section 6-102. Powers, Duties and Functions—The managing director shall:

(a) Supervise the heads of all executive agencies except the agencies under the direct supervision of the mayor.

(b) Inform himself and keep the mayor advised concerning the operations of all executive agencies under his supervision, and make, or cause to be made, investigations and studies of the internal organization and