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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 the approval of the mayor or the managing director, prescribe such rules as are necessary for the organization and internal administration of the respective executive agencies.

4. Regulations affecting the public as may be necessary to the performance of the functions assigned to executive agencies may be issued as authorized by this charter or by ordinance. Such 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 regulations. The regulations may be amended or repealed by the same process required for original promulgation.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 his office as may be assigned by the mayor.

ARTICLE V

**EXECUTIVE BRANCH—MAYOR AND AGENCIES DIRECTLY
UNDER THE MAYOR**

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 his election.

Section 5-102. Qualifications—Any citizen of the United States not less than thirty years of age who has been a duly qualified elector of the city for at least three years prior to his election shall be eligible to fill the office of mayor. Upon removal of his residence from the city, the mayor shall by that fact be deemed to have vacated his office.

Section 5-103. Compensation—The salary of the mayor shall be \$20,000.00 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.

Note: Act 255, SLH 1959, also establishes the mayor's salary at \$20,000.

Section 5-104. Powers, Duties and Functions—The mayor shall be the chief executive officer of the city. He shall have the power to:

(a) Except as otherwise provided, exercise direct supervision over all agencies enumerated in this article and other agencies as he may deem desirable and through the managing director exercise supervision over all other executive agencies of the city. He 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.

(c) Create or abolish positions but a monthly report of such actions shall be made to the council.

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

(e) Recommend to the council a pay plan for all persons employed by the city or any of its boards and commissions, whether as officers or otherwise, except those whose pay is fixed in this charter or otherwise provided for.

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

(g) Submit an operating budget, a capital program and a capital budget annually to the council for its consideration and adoption.

(h) Sign instruments requiring execution by the city except those which the director of finance or other officer is authorized by this charter, ordinance or resolution to sign.

(i) Present messages or information to the council which in his 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, and resolutions authorizing proceedings in eminent domain.

(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.

The salaries of the chief engineer and traffic engineer are fixed by the council upon recommendation of the mayor. Op 59-52. The council, upon the mayor's recommendation, can effect a transfer of funds between departments. Op 59-96. The mayor may create new positions. Op 59-97. Requests by the general public for services for which no appropriation has been made should be referred by the operating departments to the mayor for further disposition. Op 59-103. The mayor may abolish positions created by ordinance. Op 59-107. Until adoption of the operating budget ordinances pursuant to the charter, the approval of the council is required for purchases of equipment over \$50.00. Op 59-112. The mayor may create positions without the approval of the council. Op 59-115. The mayor may not make permanent transfers of positions. Op 59-115. The right and responsibility to audit city funds is not exclusively vested in the council and the mayor may under his power to exercise supervision over all executive agencies of the city cause an audit to be made. Op 59-149.

Note: Act 34, SLH 1959, amending §150-13, RLH 1955, relates to car allowances with the approval of the mayor. With respect to paragraph (e), the compensation law of the State will apply. (§5-608, charter)

Section 5-105. Location of Office—The mayor's office shall be in the city hall.

Section 5-106. Contingency Fund—The council shall provide in the annual operating budget a contingent fund of not less than \$12,000.00 to be expended by the mayor for such public purposes as he may deem proper.

Section 5-107. Office of Information and Complaint—There shall be in the office of the mayor an office of information and complaint which shall

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receive complaints and inquiries concerning city policies, programs and operations and promptly answer such complaints or inquiries.

Section 5-108. 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 the members, elect one of the councilmen-at-large to be mayor for the unexpired term, and a vacancy shall thereupon exist in the office of councilman-at-large.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by a special election, to be conducted under the election laws of the Territory insofar as applicable and which shall be called by the council and held within sixty days after the occurrence of the vacancy. The electors of the city shall then elect a person 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.

2. Pending the election of a mayor in case of a vacancy, or in the temporary absence from the Territory or temporary disability of the mayor, the managing director shall act as mayor. If the managing director should resign or be unable to act, the budget director shall then act as mayor.

After July 1, 1959, the managing director becomes the acting mayor during temporary absences of the mayor. Op 59-160.

Note: Act 94, SLH 1959, amending §149-86, RLH 1955, relating to general power of the council is not inconsistent. Op 60-54.

Section 5-109. Removal of Mayor—

1. The mayor may be impeached for malfeasance, misfeasance or non-feasance in office. The supreme court of the Territory shall constitute a board of impeachment in 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 one hundred qualified electors 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. The board of impeachment may appoint a master and invest him with power to investigate the charge and report thereon to the board. If the board sustains the charge, the mayor shall be deemed removed from office.

2. The mayor may also be removed by recall which shall be initiated upon petition signed by registered voters equal in number to at least fifteen per cent of the votes cast for the office of mayor at the last preceding mayoralty election but signatures from any one representative district, as provided by law for the election of representatives to the territorial legislature, in excess of forty per cent of the total number required on a petition shall not be counted.

Each elector signing a recall petition shall add to his signature his residence, stating the representative 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 some person, not necessarily a signer of the petition, that

to the best of the affiant's knowledge and belief the persons whose signatures appear on the sheet are registered electors 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 for filing to the city clerk. The clerk shall examine it to see whether it contains a sufficient number of apparently genuine signatures of registered voters. The clerk may question the genuineness of any signature or signatures appearing on the recall petition and if he finds that any such signature or signatures are not genuine, he shall disregard them in determining whether the petition contains a sufficient number of signatures. He shall also disregard any signature dated more than sixty days before the date the petition was tendered for filing. The clerk shall eliminate any sheet of the petition which is not accompanied by the required affidavit. 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 clerk shall complete his examination of the petition within fifteen days and shall thereupon file the petition if valid or reject it if invalid.

As soon as the clerk has accepted a recall petition for filing, he shall notify the mayor that the petition has been filed. Upon receipt of such notice the mayor may resign from his office and thereupon the recall proceedings shall terminate.

If the mayor does not resign from his office within ten days after notice of the filing of such petition shall have been given to him, the clerk shall arrange a recall election. If a general or special city or territorial 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 electors 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 the ten days have expired. The mayor 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 elector in a recall election: "Shall (name of officer) be recalled and removed from the office of mayor?"

If a majority of the registered electors who vote on the question at a recall election shall vote "Yes", the mayor shall be deemed recalled and removed from office, but if a majority of the registered electors shall vote "No", he shall remain in office.

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

No recall petition shall be filed against the mayor within the first or the last year of the term of his office or within six months after an unsuccessful recall election against him.

CHAPTER 2 CORPORATION COUNSEL

Section 5-201. Appointment and Removal—There shall be a corporation counsel who shall be appointed by the mayor, with the approval of the council, and who may be removed by the mayor.

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Section 5-202. Qualifications—The corporation counsel shall be an attorney, licensed to practice and in good standing before the supreme court of the Territory, who shall have engaged in the practice of law in the Territory for at least five years.

Section 5-203. Powers, Duties and Functions—The corporation counsel shall be the chief legal adviser and legal representative of all agencies including the council and of all officers and employees in matters relating to their official powers and duties and he shall represent the city in all legal proceedings. He shall perform all other services incident to his office as may be required by law, this charter or by ordinance.

The attorney general no longer advises the Honolulu civil service commission and department. Op 59-133.

Section 5-204. Special Deputies—Special deputies may be appointed by the corporation counsel without cost to the city with the approval of the mayor.

Section 5-205. Special Counsel—

1. No special counsel shall be retained to represent the city or any officer, or executive agency, except as provided in this chapter.

2. The mayor or any councilman may retain special counsel in impeachment proceedings initiated against him or where the corporation counsel has disqualified himself to represent him. The council shall appropriate the necessary funds to pay reasonable fees for such legal services.

3. The council may, by two-thirds vote of its entire membership, authorize the employment of special counsel for any special matter presenting a real necessity for such employment. Any such authorization shall specify the compensation, if any, to be paid for said services.

Section 5-206. Service of Legal Process—Legal process against the city shall be served upon the corporation counsel or any of his 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 councilman. When such service is made upon any officer other than the corporation counsel, such officer shall promptly notify the corporation counsel.

CHAPTER 3

BUDGET DIRECTOR

Section 5-301. Appointment and Removal—There shall be a budget director who shall be appointed and may be removed by the mayor. The position of the budget director shall be in the office of the mayor.

Since the mayor's office may be said to constitute a department, the budget director (a member of the mayor's staff), and his staff are comparable to a division within a department. Op 59-84.

Section 5-302. Qualifications—The budget director shall have had a minimum of five years of training and experience in budgeting or related fields, at least three years of which shall have been in a responsible supervisory capacity.

Section 5-303. Powers, Duties and Functions—The budget director shall:

- (a) Prepare the annual operating budget and ordinance under the direction of the mayor.
- (b) Prepare the annual capital budget ordinance under the direction of the mayor.
- (c) Review departmental work program schedules and make budgetary allotments for their accomplishment with the approval of the mayor.
- (d) Review all requests for the creation of new positions and make recommendations thereon to the mayor.
- (e) Analyze the performance of each agency and make quarterly reports to the mayor and the council on the extent to and the efficiency with which the work program of each agency has been accomplished.
- (f) Study city and departmental operations and make recommendations to the mayor for the improved efficiency and economy of such operations.

The department of water is subject to performance audit by the budget director. Op 59-61.

CHAPTER 4

DEPARTMENT OF FINANCE

Section 5-401. Organization—There shall be a department of finance headed by a director of finance.

Section 5-402. Director of Finance—The director of finance shall be appointed and may be removed by the mayor. He 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.

Section 5-403. Powers, Duties and Functions—The director of finance shall be the chief accounting officer of the city and shall:

- (a) Prepare bills for the collection of money due the city, or authorize the preparation thereof by other executive agencies of the city government, under his 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 him.

On and after July 1, 1959, all billing and collection of money shall be done by the director of finance, or under his authorization. As to the department of health, Op 59-51; as to department of public works, Op 59-52; as to building department, Op 59-70; as to poundmasters, Op 59-72.

- (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 adopted under the terms of this charter.

This is an exception to §9-405, which provides that the mayor shall sign all of the city's contracts. Contracts of the type described in this subsection are to be executed by the director

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of finance. Op 59-126. Construction contracts are not contracts for services within the meaning of this subsection. Op 59-127. An award of the contract to buy miscellaneous school furniture and equipment does not require the authorization of the council. Op 60-13. The director of finance is empowered to make the ultimate selection of independent contractors on behalf of the city. Op 60-36.

- (f) Have the responsibility of issuing and 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, and dispose of movable property not needed by any agency of the city pursuant to policies established by the council.
- (k) Rent or lease city property except property controlled by the board of water supply, and award concessions, pursuant to policies established by the council.

Concessions in public parks will be granted by the director of finance pursuant to policies established by the council. Op 59-69. Act 71, SLH 1957, amending §149-86(33a), RLH 1955, relating to leasing of city property is inconsistent and therefore superseded, Op 59-111, but §141-1 and §149-86(34), RLH 1955, relating to sale of city property, are not inconsistent, Op 59-111 (See Op 60-52). Act 245, SLH 1959, relating to bidding on concessions is not inconsistent. Op 59-207. Act 176, SLH 1959, amending §149-86, RLH 1955, relating to powers of the board of supervisors by adding a paragraph relating to the sale of land is not inconsistent with this charter. Op 60-52.

Note: Pursuant to paragraph (k), the council adopted on January 12, 1960 a policy relating to the renting or leasing of city property and the awarding of concessions. (Dept. Com. No. 2278 (1959))

- (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 in central city store-rooms.
- (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 director of finance, 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. Provide information pertaining to the financial affairs of the city, and make financial reports at least quarterly to the mayor and the council.

Note: Act 87, SLH 1959, provides for the discarding of vehicle registration records which are older than six years. Act 235, SLH 1959, as amended by Act 24, SS 1959, provides for the issuance of municipal bonds by the director of finance with the approval of the council.*

Section 5-404. Cash Count—The director of finance 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 report shall be filed with the mayor and the council and another signed copy shall be posted in the department of finance for public view for at least one month from the date of such report.

The auditor and a person designated by the council are the persons who are to conduct the cash count until January 2, 1961. Op 59-102.

Section 5-405. Board of Trustees of the Policemen, Firemen, and Bandsmen Pension Fund—The organization and the duties and functions of the board of trustees of the policemen, firemen and bandsmen 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 finance and the director of finance shall ex officio be the secretary and treasurer of the board.

Duties and functions remain unchanged. Op 59-66.

Section 5-406. Pension Board of the City and County of Honolulu—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 finance and the director of finance shall ex officio be the secretary and treasurer of the board.

Duties and functions remain unchanged. Op 59-67.

CHAPTER 5

PLANNING DEPARTMENT

Contracts executed by the predecessor of the planning department (the city planning commission) on behalf of the city remain unaffected by the adoption of the charter. Op 59-146.

Section 5-501. Organization—There shall be a planning department, consisting of a planning director, a planning commission, a zoning board of appeals and the necessary staff.

Section 5-502. Planning Director—The planning director shall be appointed by the mayor with the approval of the council and may be removed by the mayor. He 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 an administrative capacity in charge of major city planning activities. He shall be the administrative head of the planning department.

The planning director is to be appointed by the mayor subject to approval of the council. Op 59-85.

Section 5-503. Powers, Duties and Functions of the Planning Director—The planning director shall:

- (a) Prepare a general plan and development plans for the improvement and development of the city.
- (b) Prepare an ordinance governing the subdivision of lands within the city.