

PUBLIC WORKS INFRASTRUCTURE

Chapter 14

PUBLIC WORKS INFRASTRUCTURE REQUIREMENTS INCLUDING FEES AND SERVICES

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## Article 1. General Provisions

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### Sec. 14-1.1 Purpose.

- (a) Articles 1 through 10 of this chapter set forth uniform requirements for industrial users of the city's wastewater collection and treatment system, to enable POTWs to protect their interceptors, treatment, pumping, and disposal systems and to comply with all applicable state and federal laws required by the Federal Water Pollution Control Act, as amended, and the General Pretreatment Regulations (40 CFR Part 403).
- (b) The objectives of Articles 1 through 10 of this chapter are:
- (1) To protect the health and safety of the people and enhance the environmental quality of the city and its surroundings;
  - (2) To comply with the applicable state and federal laws relating to the protection of the environment, control of water pollution, pretreatment of industrial discharges, and the disposal of hazardous wastes in POTWs;
  - (3) To prevent the introduction of pollutants in the POTW that will interfere with the operation of the POTW, including interference with its use or disposal of municipal sludge;
  - (4) To prevent the introduction of pollutants in the POTW that will pass through the treatment works or otherwise be incompatible with such works;
  - (5) To ensure that the quality of the POTW sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
  - (6) To protect the health and welfare of workers at the treatment plants;
  - (7) To prevent the introduction of wastes to sewers connected to the POTW that could result in the POTW being classified as a hazardous waste treatment, storage, or disposal facility under applicable state or federal laws;
  - (8) To provide for source monitoring and control of quantity, quality, and rate of flow of residential, commercial, and industrial wastes entering the POTW;
  - (9) To establish enforcement procedures and penalties for violations;
  - (10) To regulate the use, connection and construction of all public and private sewers and to fix charges therefor; and
  - (11) To authorize the director of the department of environmental services to effectively enforce the provisions of Articles 1 through 10 of this chapter.

(Sec. 11-1.1, R.O. 1978 (1983 Ed.); Am. Ord. 94-46, 01-64)

### Sec. 14-1.2 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

Act. See definition of federal act in this section.

“Advanced primary treatment” means an intermediate form of wastewater treatment which provides for removal of generally 75 percent of the suspended solids and 45 percent of the BOD<sub>5</sub>.

“Assessment” or “sewer assessment” means a compulsory levy or charge on selected property for a particular sewer improvement undertaken in the interests of the public and which benefits the lessees or owners of the selected property.



Authorized Representative. Pursuant to 40 CFR Section 403.12(1), an “authorized representative” of the industrial user is defined as and shall be:

- (1) A responsible corporate officer if the industrial user submitting the statement or report is a corporation. For the purpose of this definition, a responsible corporate officer means:
  - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
  - (B) The manager of one or more manufacturing, production or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000.00, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) A general partner or proprietor if the industrial user submitting the statement or report is a partnership or sole proprietor, respectively.
- (3) A duly authorized representative of the individual designated in subdivision (1)(A) or (1)(B) of this definition if:
  - (A) The authorization is made in writing by the individual described in subdivision (1)(A) or (1)(B) of this definition;
  - (B) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and
  - (C) The written authorization is submitted to the department.
- (4) If an authorization under subdivision (3) of this definition is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision (3) of this definition shall be submitted to the department prior to or together with any other reports to be signed by an authorized representative.

“Backup facilities” means and includes the wastewater conveyance system (interceptors, trunk sewers, mains and pumping stations); the wastewater treatment plant; and the ocean outfall or wastewater disposal system. Specifically excluded are sewer laterals, in-tract facilities and main extensions, for which the costs have been contributed by users of the system.

“Benefited” or “special benefited property” means that property or portion of a property provided with a direct or indirect connection to the public sewer, deriving therefrom the direct and indirect advantages and benefits of sewer service.

“Biochemical oxygen demand” (BOD<sub>5</sub>) means a standard test used in assessing sewage strength and is the measure of decomposable organic material in domestic or industrial wastewater as represented by the oxygen utilized over a period of five days at 20 degrees Celsius and as determined by the appropriate procedure in “Standard Methods.”

“Building sewer” or “house sewer” means that portion of a pipe or conduit carrying sanitary sewage and/or industrial wastes from a building to the public sewer or a common sewer.

“Categorical industrial user” means an industrial user who is subject to categorical pretreatment standards under 40 CFR Section 403.6 and 40 CFR Chapter I, Subchapter N, Parts 405-471.

“Categorical pretreatment standard” or “categorical standard” means any regulation containing pollutant discharge limits promulgated by the U.S. Environmental Protection Agency in accordance with Sections 307(b) and (c) of the Federal Water Pollution Control Act, which apply to a specific category of industrial users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

“Cesspool” means a covered lined or partially lined pool, pit or deep hole in the ground to receive the untreated discharges of sewage and from which the liquids seep into the surrounding soil through the bottom or sides.

“City” means the City and County of Honolulu.

“Combined sewer” means a sewer receiving a mixture of storm water and sanitary sewage with or without industrial wastes.

“Commercial cooking oil waste.” See the definition under Section 14-5A.1.

“Commercial FOG waste.” See the definition under Section 14-5A.1.

“Composite sampling” means a collection of a number of discrete sample aliquots obtained through flow-proportional samples, at constant time intervals between samples and composites for analysis. Composite sampling techniques shall be performed in accordance with Appendix E to 40 CFR Part 403.



“Connection” means any connection made or to be made to a public sewer at a manhole, in a new manhole, at the end of a stub, wye, saddle wye, lateral or main.

“DOH” means the State of Hawaii, department of health.

“Days” means calendar days, including weekends and holidays, unless otherwise indicated.

“Department” means the department of environmental services of the City and County of Honolulu.

“Director” means the director of the department of environmental services or the director’s authorized representatives.

Discharge. See definition of indirect discharge in this section.

“Domestic wastewater” means the water-carried wastes produced from noncommercial or nonindustrial activities and which result from normal human living processes.

“Drain, storm” means a pipe, conduit or channel used for conveying storm and surface water, wash water or other similar discharges but excludes sewage and polluted industrial wastes.

“Dry weather flow” means wastewater flow during periods of little or no rainfall. Rates of flow exhibit hourly, daily and seasonal variations. A certain amount of infiltration may also be present.

“Dwelling unit” means a room or rooms connected together constituting an independent living unit with independent exterior access that includes a food preparation area. The existence of separate rental/lease agreements, addresses, and mailboxes can be used in determining dwelling unit counts for sewer service charge assessment purposes.

“EPA” means the United States Environmental Protection Agency.

“Effluent” means sewage, water or other liquid flowing out of any basin treatment device or facility.

“Entitlement” means the amount of sewage capacity reserved for the property.

“Equivalent single-family dwelling unit” (ESDU) means the fundamental unit that will be utilized to express the imputed seasonal average wastewater volume for new applicants for service and for existing users of the city’s wastewater system. One ESDU is equal to about 305 gallons per day in Honolulu, or about 9,000 gallons per month.

“Extension” or “extension sewer” means the continuation of an existing public sewer through public or private property not owned, in whole or in part, by the applicant or owner of the particular property or subdivision to be served.

“Federal act,” “act,” or the “Federal Water Pollution Control Act,” refers to PL 92-500, also known as the Clean Water Act, and amendments thereto, 33 U.S.C. 1251, et seq., as well as regulations and standards promulgated by the EPA, or successor, pursuant to the act.

“Food preparation area” means an area containing fixtures, appliances, or devices for:

- (1) Heating, preparing or cooking food;
- (2) Refrigerating food; and
- (3) Washing utensils used for dining and food preparation and/or for washing and preparing food.

The permanent removal of both elements 1 and 2 above, or element 3 above are/is required to eliminate a food preparation area for sewer service charge assessment purposes.

“Force main” means a pipeline on the discharge end of a pump carrying flow under pressure.

“40 CFR” means Title 40 of the Code of Federal Regulations relating to the protection of the environment.

“Grab sampling” means a method of obtaining an individual sample collected over a period of time not exceeding 15 minutes. Grab sampling should be employed where the pollutants being evaluated are those which may not be held for an extended period because of biological, chemical or physical interaction which takes place after sample collection and affects the results.

“Grease” means any material which is extractable from an acidified sample of a waste by hexane or other designated solvent and as determined by the appropriate procedure in “Standard Methods.”

“House connection” means the sewer connecting the building sewer or building waste drainage system to the public sewer for the purpose of conveying domestic wastewater.

House Sewer. See definition of building sewer in this section.

“Indirect discharge” or “discharge” means the introduction of pollutants into a POTW from any nondomestic source regulated under Sections 307(b), (c), or (d) of the Federal Water Pollution Control Act, also known as the Clean Water Act.

“Individual wastewater disposal system” means any system of storing, treating or disposing of wastewater on the property where it originates or on adjacent or nearby property under the control of the user where the system is not connected to a city wastewater system. Individual wastewater disposal systems include, but are not limited to, cesspools, septic tanks and household aerobic units. Excluded are wastewater treatment plants.

“Industrial connection sewer” means the sewer connecting the building sewer or building waste drainage system to the public sewer for the purpose of conveying industrial wastewater.

“Industrial user” or “user” means a source of indirect discharge.

“Industrial wastewater” means all water-carried wastes and wastewater excluding sanitary wastewater.

“Industrial wastewater discharge permit” or “permit” means a document issued by the department authorizing discharge of industrial waste, unless otherwise indicated.

“Infiltration” means the unintentional entry of water into the wastewater collection system from the surrounding soil. Common points of entry include broken pipe and defective joints in the pipe or walls of manholes. Infiltration may result from sewers being laid below the groundwater table or from saturation of the soil by rain or irrigation water, seepage of groundwater into a sewer system, including service connections. Seepage frequently occurs through defective or cracked pipes, pipe joints, connections or manhole walls.

“Inflow” means water discharged into the sewer system and service connections from such sources as, but not limited to, roof leaders, cellars, yard and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, and around manhole covers or through holes in the covers, cross connections from storm and combined sewer systems, catch basins, storm waters, surface runoff, street wash waters or drainage. Inflow differs from infiltration in that it is a direct discharge into the sewer rather than a leak into the sewer itself.

“Influent” means sewage, water or other liquid flowing into any basin treatment device or facility.

“Interceptor” means a sewer which is laid transversely to the general sewer system which receives flow from sewer mains and lateral sewers and conducts such flow to a plant for treatment and disposal.

“Interference” means any discharge which, alone or in conjunction with a discharge or discharges from other sources:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; or
- (2) Is a cause of a violation of the NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory or regulatory provisions or permits issued thereunder: Section 405 of the Federal Water Pollution Control Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulation contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

“Lateral” or “lateral sewer” means a branch or side sewer of a minimum six-inch inside diameter in size from a public sewer main to serve one or more lots.

“Local limits” means prohibitive discharge limits developed by the city pursuant to 40 CFR Section 403.5 and are deemed pretreatment standards for the purposes of Section 307(d) of the act.

“Main” means a sewer into which several laterals or other sewer lines may discharge.

“Manhole” means an opening in a sewer constructed for the purpose of permitting a person to enter or leave the sewer.

“May” is permissive.

“NPDES permit” (National Pollutant Discharge Elimination System permit) refers to the written requirements established by DOH, which govern the quality and quantity of wastewater discharged from a POTW.

“National pretreatment standard,” “pretreatment standard,” or “standard” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Federal Water Pollution Control Act, as amended, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR Section 403.5, categorical pretreatment standards, and local limits provided in the sewer ordinance.

“New source” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commences after the publication of proposed pretreatment standards under Section 307(c) of the act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section. Specific location and construction criteria for determining a new source are as defined in 40 CFR Section 403.3(k), as revised.

“Noncompliance” means any violation of a provision of Articles 1 through 10, the local limits, the industrial wastewater discharge permit, or National Categorical Standards.

“Ocean outfall” means a conveyance system whereby treated wastewater is discharged to the marine receiving waters for final disposal.

“Order” or “director’s order” means a written determination, revocation, authorization, permission, direction, or document, including but not limited to a permit issued by the director pursuant to this chapter.

“Owner” means and includes a holder in fee, life tenant, executor, administrator, trustee, guardian or other fiduciary, lessee or licensee holding under any government lease or license of real property.

“pH” means the reciprocal of the logarithm of the hydrogen ion concentration. It indicates the intensity of acidity and alkalinity on a pH scale running from 0 to 14. A pH value of 7.0, the midpoint of the scale, represents neutrality. Values above 7.0 indicate alkalinity and those below 7.0 indicate acidity.

POTW. See definition of publicly owned treatment works in this section.

“Pass through” means a discharge that exits the POTW into the waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the district’s NPDES permit, including an increase in the magnitude or duration of a violation, or which causes water quality standards established by the State or EPA to be exceeded.

Permit. See definition of industrial wastewater discharge permit in this section.

“Person” or words importing persons, for instance, “another,” “others,” “any,” “anyone,” “anybody” and the like, shall signify not only individuals, but corporations, trusts, partnerships, limited liability companies, firms, associations, societies, communities, assemblies, inhabitants of a district or neighborhood, or persons known or unknown, and the public generally, where it appears, from the subject matter, the sense and connection in which such words are used, that such construction is intended.

“Pollution” means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

“Pretreatment requirement” means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, applicable to an industrial user.

Pretreatment Standard. See definition of national pretreatment standard in this section.

“Pretreatment system or device” means any control equipment which performs the process of pretreatment.

“Primary treatment” means a basic form of wastewater treatment which provides for removal of generally 30 percent of the suspended solids and 30 percent of the BOD<sub>5</sub>.

“Private sewer” means a sewer, privately owned, which is not directly controlled by the department.

“Public sewer” means a sewer directly controlled by the department.

“Publicly owned treatment works” (POTW) means a treatment works as defined by Section 212 of the Federal Water Pollution Control Act, which is owned by a state or municipality (as defined by Section 502(4) of the Federal Water Pollution Control Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW. The term also means the municipality as defined in Section 502(4) of the Federal Water Pollution Control Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

“Relief sewer” means a sewer constructed to relieve an existing line or lines determined to be structurally defective or inadequate and of insufficient capacity.

SADWF. See definition of seasonal average dry weather flow in this section.

“Sanitary sewer” means a sewer the specific purpose of which is to carry only sanitary sewage.

“Seasonal average dry weather flow” (SADWF) means the average daily flow during the month of maximum wastewater discharge for each seasonal discharger.

“Secondary treatment” means an advanced form of wastewater treatment which provides for removal of 85 percent of the suspended solids and 85 percent of the BOD<sub>5</sub>, minimum.

“Self-monitoring” means wastewater sampling performed by an industrial user in accordance with the municipality’s pretreatment program. Self-monitoring requirements will be specified in the industrial wastewater discharge permit.

“Septic tank” means a watertight settling tank in which settled sludge is in immediate contact with the sewage flowing through the tank and the organic solids are decomposed by an aerobic bacterial action.

“Sewage” means the waterborne wastes derived from ordinary human living processes and of such character as to permit satisfactory disposal, without special treatment, into the public sewer, a private sewer, or by means of a household sewage disposal system.

“Sewage pump station” means any arrangement of devices within a structure used for lifting and forcing out sewage.

“Sewage treatment plant” means any arrangement of devices and structures for treating sanitary sewage and industrial wastes excluding cesspools, individual household septic tank systems and individual household aerobic units.

“Sewer” means a pipe or conduit for carrying sewage.

“Sewer, building or house” means that portion of a pipe or conduit carrying sanitary sewage and/or industrial wastes from a building to the public sewer or a common sewer.

“Sewer, private” means a sewer, privately owned, which is not directly controlled by the department.

“Sewer, public” means a sewer directly controlled by the department.

“Sewer system” means a system of piping, with appurtenances, for collecting and conveying sewage from source to discharge.

“Shall” is mandatory.

Significant Industrial User. A “significant industrial user” is defined as:

- (1) All industrial users subject to categorical pretreatment standards under 40 CFR Section 403.6 and 40 CFR Chapter I, Subchapter N; and
- (2) Any other industrial user that:
  - (A) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
  - (B) Contributes to a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant;
  - (C) Is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement.

Significant Noncompliance. An industrial user is in “significant noncompliance” as defined in 40 CFR Section 403.8 (f)(2)(vii), if its violation meets one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- (2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the city determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW’s exercise of its emergency authority under Sections 14-5.4, 14-5.19, and 14-5.20 to halt or prevent such a discharge;
- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance;
- (8) Any other violation or group of violations which the city determines will adversely affect the operation or implementation of the local pretreatment program.

“Slug” means any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge as defined under 40 CFR Section 403.8(f)(2)(v). Slug discharges also include any discharges as defined by 40 CFR Section 403.5(b).

“Storm drain” means a slotted opening leading to an underground pipe or an open ditch for carrying surface runoff.

“Storm sewer” means a sewer which carries only storm water.

“Storm water” means runoff from a storm event, and surface runoff and drainage.

“Subdivision” means a division of a piece of property into two or more lots.

“Suspended solids” means solids that either float on the surface of, or are in suspension in, water, sewage or other liquids; and which are largely removable by laboratory filtering and as determined by the appropriate procedure in “Standard Methods.”

“Toxic pollutant” means any pollutant listed as toxic under Section 307(a)(1) of the Federal Water Pollution Control Act.

“Toxic substances” means any substance whether gaseous, liquid or solid, which when discharged to the sewer system in sufficient quantities may tend to interfere with any sewage treatment process, or to constitute a hazard to human beings or animals, or to inhibit aquatic life or create a hazard to recreation in the receiving waters of the effluent from the sewage treatment plant.

“User” means an individual, establishment or industry using any part of the public sewer.

“Waste hauler” means any person carrying on or engaging in the collection, vehicular transport and/or disposal of wastewater.

“Wastewater” means any liquid waste of any kind, whether treated or not, and whether animal, mineral or vegetable including sewage, agricultural, industrial and thermal wastes.

“Wastewater system facility charge” means a fee levied against:

- (1) A new applicant for service, for the privilege of connecting its property to the city’s wastewater system; and
- (2) An existing user of the city’s wastewater system, for the privilege of increasing its prior use of the city’s wastewater system or for any enlargement of existing structures.

“Wastewater system facility charge increment” means the fee levied against the applicant who increases the applicant’s entitlement. The fee is determined by subtracting the applicant’s current ESDU from the applicant’s future ESDU.

(Sec. 11-1.2, R.O. 1978 (1983 Ed.); Am. Ord. 90-80, 91-86, 91-93, 93-04, 93-32, 94-46, 94-73, 96-58, 01-64, 02-14, 12-7)

### **Sec. 14-1.3 Authority of the director.**

- (a) The director is authorized to administer and enforce the provisions of this chapter; to conduct an industrial waste pretreatment program; to issue permits containing discharge requirements, indemnification and surety provisions and other conditions; to deny or revoke any permits, orders or variances issued pursuant to this chapter; to promulgate local limitations imposing specific discharge requirements; to enforce the provisions of this chapter by any lawful means available for such purpose; to monitor and inspect any industrial user; to require industrial users to perform and submit for the director’s review and approval wastestream and process environmental audits and to require industrial users to implement any objectives, including reclamation and waste minimization objectives, identified by the audits; and to promulgate such orders, rules and regulations necessary to accomplish the purposes of this chapter in accordance with the requirements that have been or may be promulgated by federal or state governments, including the EPA and the DOH.  
The director also may monitor, inspect, and audit any business with a pretreatment device, any business using or selling cooking oil, any person removing and transporting commercial cooking oil waste or commercial FOG waste, and any recycling facility converting commercial cooking oil waste or commercial FOG waste into a marketable product.
- (b) The director may require the industrial user to construct and operate additional pretreatment systems or devices to treat wastewater prior to discharge into the sewerage system to achieve compliance with applicable categorical pretreatment standards. New categorical industrial users shall install and operate pretreatment systems necessary to meet applicable pretreatment standards prior to discharge and shall comply with all applicable categorical pretreatment standards within the shortest feasible time, not to exceed 90 days. The director may require any industrial user to develop a compliance schedule containing dates for the commencement and completion of major events leading to the construction and operation of pretreatment systems or devices necessary for compliance with the provisions of this chapter in the shortest time possible. No compliance schedule shall allow more than nine months from commencement of the compliance schedule to achieving a milestone compliance to full compliance. In the case of a new categorical industrial user, the final date in the compliance schedule shall not be later than the compliance date established for the applicable categorical pretreatment standard. All proposed pretreatment systems or devices shall be subject to the review and comment of the director, but such review shall not relieve an industrial user of the responsibility for taking all steps necessary to comply with all applicable discharge limitations and standards

pursuant to this chapter and other laws. All required pretreatment systems or devices shall be installed, operated and maintained at the industrial user's expense.

- (c) The director may, by permit or order, require an industrial user to construct, in accordance with current city standards and at the industrial user's expense, a monitoring facility immediately downstream from pretreatment facilities. If no pretreatment facilities exist, the monitoring facility shall be constructed immediately downstream from the regulated process.
- (d) Any permit may be revoked, modified or suspended by the director, in addition to seeking injunctive relief and/or imposing civil penalties, when such action is necessary to stop a discharge or a threatened discharge that may present a hazard to the public health, safety, welfare, natural environment, or sewerage system, to prevent or stop violations of this chapter, the industrial wastewater discharge permit and federal pretreatment standards, or to implement programs or policies required or requested of the city by appropriate state or federal regulatory agencies.
- (e) The director retains the right to deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants discharged into the city's treatment plants by industrial users where such contributions or changes do not meet applicable pretreatment standards and requirements or where such contributions would cause the city to violate the requirements of its NPDES permit.

(Added by Ord. 94-46; Am. Ord. 02-14)

#### Sec. 14-1.4 Emergency actions.

The director is authorized to take all necessary actions to immediately and effectively halt or prevent any discharge or threatened discharge of pollutants to the sewerage system that may pose an imminent danger to the health or welfare of persons or to the environment, or that interferes or threatens to interfere with the operations of the sewerage system. The industrial user shall immediately cease undertaking such action or discharge of any wastewater presenting such a hazard upon verbal or written notification by the director. (Added by Ord. 94-46)

(Sec. 14-1.5 Lateral sewer construction and connection. Renumbered by Ord. 94-46.)

#### Sec. 14-1.5 Reserved.

#### Sec. 14-1.6 Use of public sewers.

(a) When Required. Every lot that has sanitary facilities requiring sewage disposal which is accessible to a public sewer and is not connected shall be connected to the public sewer within 90 days after the owner or person legally responsible has been notified to do so. The director may grant an owner or person legally responsible a 30-day extension of time to connect to the public sewer upon a showing of extenuating circumstances and a good faith effort by such owner or person to make the connection. Under no circumstances shall the director grant more than three, 30-day extensions of time.

##### (b) Permit to Connect.

(1) A permit to connect shall be obtained from the department before any connection or reconnection may be made to a public sewer.

(2) Said permit is issued only for the facility or improvement shown on the original plans and specifications or application.

(3) Where any money or payment is due the department for a connection, the full amount shall be paid before the connection is made.

(4) Said permit will be issued only after an application for a building permit has been filed.

(5) All connections for industrial wastewater shall require an industrial wastewater discharge permit before a permit to connect is issued.

(c) Where Public or Private Sewer System Is Not Available. Where public or private sewers are not available or accessible, an owner may elect to construct a cesspool or septic tank or other aerobic treatment unit as defined in Chapter 62, State of Hawaii Administrative Rules, provided the use of such a unit meets the public health requirements of all public agencies having jurisdiction over the use of said facilities.

(d) Where Public or Private Sewer Is Inadequate. Where public or private sewers are inadequate to accommodate additional sewage, connection will not be permitted until the inadequacy is relieved either by the city or the applicant at the applicant's expense. For sewer lines, the relief sewer shall be constructed to the city's ultimate master plan size and location in accordance with Section 14-2.1(b).

(e) The property owner shall be responsible for maintaining the integrity of the sewer lateral line from his or her residence or building to the edge of the property line. This maintenance shall include, but not limited to, keeping the lateral line in such a state that there is no inflow or excessive infiltration entering the lateral line.

(Sec. 11-1.3, R.O. 1978 (1983 Ed.); Sec. 14-1.3, R.O. 1990; Am. Ord. 94-46)

Sec. 14-1.7 Sewer extensions—Application—Payment—Specifications.

(a) Application.

(1) The property owner or subdivider of an unsewered area may apply for an extension. The application must be in writing. If the application is approved by the department, the department shall make an estimate of the cost and submit it to the applicant.

(2) The cost shall include land acquisition, engineering and inspection.

(b) Payment and Refund.

(1) The owner or subdivider shall pay 50 percent of the cost of any portion of such extension which passes through property not owned or controlled by such person and 100 percent of the cost of any portion which passes through property owned or controlled by such person.

(2) Before any contract is let, the applicant shall deposit with the department a sum equal to the applicant's share of the estimated cost. In the event the sewer extension costs less than the estimate, a refund will be made to the applicant. If it costs more than the estimate, the applicant shall pay the applicant's share of the difference to the department.

(c) Specifications.

(1) The extension of an existing public sewer, any part of which runs through property not owned or controlled, wholly or in part, by the owner or subdivider shall be constructed by the department, upon approval by the director, in accordance with the provisions of HRS Chapter 103, as amended. Such extension shall extend to the proximate boundary of the land specified in the application or of land owned by the owner or subdivider and contiguous to the land specified, whichever is closer.

(2) The department shall construct the extension including any laterals to serve the applicant's area. The department shall determine the type, size and location of the extension. The applicant, property owner or subdivider shall not have any title to the extension.

(Sec. 11-1.4, R.O. 1978 (1983 Ed.); Sec. 14-1.4, R.O. 1990; Am. Ord. 94-46)

Sec. 14-1.8 Lateral sewer construction and connection.

(a) Lateral Construction. All laterals shall not have less than six-inch inside diameter and shall be installed, when practicable, at a right angle with the sewer. Each shall end at the property line with a six-inch by four-inch or the required size reducer properly capped unless excepted in special cases by the director.

(b) Connection to a Lateral.

(1) A four-inch or appropriate size cast iron long radius 90-degree bend shall be connected to the lateral from which shall extend the cast or schedule 40 polyvinyl chloride riser and cleanout vertically to at least one inch above ground except in a sidewalk and driveway area. In sidewalk and driveway areas, the cleanout shall be flush with the surface and shall be made of brass. The director may require the installation of a concrete block below the 90-degree bend in sandy or soft soil areas. No construction shall be backfilled or covered until inspected and approved by the department.

The lateral connection described in this subsection may be varied at the approval of the department to accommodate special topographic conditions. In all cases, the pipe connection to the lateral and the riser extension shall be of cast iron material.

The entire cleanout shall be installed within the property and at the expense of the property owner. In improvement district projects, the city may install all or a portion of the riser extension at city expense when directed by the director. A sewer manhole in lieu of the above cleanout shall be installed when directed by the director.

(2) If an existing lateral connection does not include a cleanout as described above, the property owner shall have one installed within 60 calendar days after written notice has been given the owner by the director.

(3) Special control structures and other appurtenances shall be constructed by the applicant when required by the director.

(c) Lateral Installation Charges. An applicant for lateral sewer installation shall pay for installation charges in accordance with the schedule of charges in Section 14-3.2.

(Sec. 11-1.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Sec. 14-1.5, R.O. 1990; Am. Ord. 90-50, 94-46)

Sec. 14-1.9 Use of public sewers—Restrictions—Violations.

(a) No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, or any other source of inflow into any public sewer or any private sewer which is connected to the public sewer. However, the director may approve discharges of any nature or origin from public projects into the public sewer or any private sewer which is connected to the public sewer.

(b) No person shall enter, obstruct, uncover or tamper with any portion of the public sewer, or connect to it, or discharge any wastewater or any other substance directly into a manhole or other opening in the public wastewater system other than in accordance with requirements established by Articles 1 through 10 of this chapter

and through service sewers approved by the director, except that the director may grant permission and establish requirements and policies for such direct discharge.

This subsection, however, shall not authorize the director to approve the discharge of any commercial cooking oil waste or commercial FOG waste into the public sewer system.

(c) No person or party shall remove or demolish any building or structures with plumbing fixtures connected directly or indirectly to the public sewer without first notifying the department of the intention to do so. All openings, in or leading to the public sewer line or lines caused by such work, shall be sealed watertight.

(d) No person shall fill or backfill over, or cause to be covered or obstruct access to, any sewer manhole.

(e) No person shall erect any improvements, including but not limited to, foundations, structures or buildings over public sewers without the written permission of the director of planning and permitting.

(f) The general and specific prohibitions set forth by the federal regulations at 40 CFR Section 403.5 are hereby incorporated into this chapter by reference.

(g) No person shall discharge or cause to be discharged any of the following into any public sewer or any private sewer that is connected to a public sewer:

(1) Any pollutant(s) which may cause obstruction, upset, pass-through or interference with the operation of the POTW or may impact public health or the environment;

(2) Pollutants which may create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR Section 261.21. At no time shall two successive readings on an explosion hazard meter at the point of discharge into the system be over five percent, nor shall any single reading be over ten percent of the lower explosive limit of the meter;

(3) Pollutants which cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.5 or higher than 11.0, unless the POTW is specifically designed to accommodate such discharges;

(4) Solid or viscous pollutants in amounts which may cause obstruction to the flow in the POTW resulting in interference;

(5) Any pollutant, including oxygen-demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which may cause pass-through or interference in the POTW;

(6) Heat in the amounts which may inhibit biological activity in the POTW resulting in interference, but in no case shall heat be permitted in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees Centigrade (104 degrees Fahrenheit);

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Any trucked or hauled pollutants except those allowed by permit at discharge points designated by the director;

(9) Ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, paper ware either whole or ground or any other solid or viscous substances or normally dry, solid wastes capable of causing obstruction to the flow in or damage to sewers or other interference with the proper operation of the wastewater works;

(10) Any wastewater containing toxic pollutants such as herbicides and insecticides, in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the POTW. A toxic pollutant shall include, but is not limited to, any pollutant identified pursuant to Section 307(a) of the Federal Water Pollution Control Act, as amended;

(11) Any unusual volume of flow or concentration of wastewater constituting "slugs" as defined in Section 14-1.2 without notification to the POTW;

(12) Water or wastes which have been contaminated by radioactive materials;

(13) Water added for the purpose of diluting wastewater, which would otherwise exceed applicable maximum concentration limitations set by the POTW or the federal categorical pretreatment standards;

(14) Water or wastewater containing in excess of the following local limits:

- 0.50 mg/L Arsenic
- 0.69 mg/L Cadmium
- 2.77 mg/L Total chromium
- 3.38 mg/L Copper
- 1.90 mg/L Total cyanide
- 0.60 mg/L Lead
- 0.50 mg/L Mercury
- 3.98 mg/L Nickel
- 2.00 mg/L Selenium
- 0.43 mg/L Silver
- 2.61 mg/L Zinc

2.00 mg/L Phenolic compounds  
100.00 mg/L Oil and grease;

(15) Wastewater with concentrations exceeding national categorical pretreatment standards promulgated by the U.S. Environmental Protection Agency in accordance with Sections 307(b) and (c) of the Federal Water Pollution Control Act, as amended. The national categorical pretreatment standards in 40 CFR Chapter I, Subchapter N, Parts 405-471, are hereby incorporated into this section. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in Articles 1 through 10 of this chapter and, if more stringent than limitations imposed under this section, shall immediately supersede the limitations imposed under this section;

(16) Any substance which may cause a city wastewater treatment plant's effluent or any other products thereof, such as residues, sludges, or scum to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to a city wastewater treatment plant cause it to be in noncompliance with sludge use or the disposal criteria, guidelines or regulations developed under Section 405 of the Federal Water Pollution Control Act (P.L. 92-500), as amended; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or the Toxic Substances Control Act; or State of Hawaii criteria applicable to the sludge management method being used;

(17) Any substance which may cause the city's wastewater treatment plant to violate its national pollutant discharge elimination system permit or State of Hawaii water quality standards;

(18) Any wastewater with an animal/vegetable fat, oil and grease (FOG) content having detrimental characteristics so as to cause obstruction, upset, interference, or pass-through in the POTW, or result in adverse impact on public health or the environment; and

(19) Any wastewater with petroleum hydrocarbon concentration greater than 100 mg/L or having detrimental characteristics so as to cause obstructions, upset, interference or pass-through in the POTW, or result in adverse impact on the public health or the environment.

(h) A pretreatment device(s) shall be required when deemed necessary by the director for users which may discharge any pollutant/indirect discharge, including but not limited to, fats, oils and grease of animal, fish, marine mammal or vegetable origin, into any public sewer or any private sewer that is connected to a public sewer.

(1) All pretreatment devices shall be designed, sized, constructed, installed, and maintained such that they comply with:

(A) All applicable federal, state and/or local discharge limits; and

(B) All department policies and rules, as amended.

(2) All pretreatment devices shall be maintained in efficient operation at all times by the owner at the owner's expense. The maintenance frequency shall be determined by the director and shall be based on department policies or rules. In cases where there are no department policies or rules, the frequency of maintenance for a pretreatment device(s) shall be established by the recommendation of the manufacturer of the pretreatment device(s). In maintaining these pretreatment devices, the owner shall be responsible for the proper removal and disposal by appropriate means of the captured material, and shall maintain records of the dates, amounts, and means of disposal, all of which shall be subject to review by the director.

(i) Any industrial user who shall discharge or cause to be discharged into the public sewers any wastewater having more than 200 mg/L of suspended solids or BOD<sub>5</sub> shall pay a surcharge in accordance with Section 14-6.6 to the city based on the extent to which such wastewater shall contain an excess over the foregoing limitation of concentration.

(j) Where preliminary treatment facilities are provided for any wastewater as a condition of its acceptance, they shall be maintained continuously in satisfactory and effective operation by the owner at the owner's expense.

(k) When required by the director, the owner of any property served by a building sewer carrying industrial wastewater shall install monitoring and recording equipment, and a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of the wastewater. Such manhole shall be readily accessible and safely located, and shall be constructed in accordance with plans approved by the director. If applicable, the manhole shall be designated in the industrial user's wastewater discharge permit as its approved sampling location. The manhole shall be installed and maintained by the owner at the owner's expense.

(l) All pretreatment program monitoring activities discussed in Articles 1 through 10 of this chapter shall be conducted in accordance with the methods and procedures in 40 CFR Part 136, as amended, and shall be made at the sampling location identified in the industrial wastewater discharge permit.

(m) Dilution is prohibited as a substitute for treatment. Except where expressly authorized by the director to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The director may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other

cases where the imposition of mass limitations is appropriate.

(n) Any discharge which would be considered a hazardous waste, as defined by the state and/or federal laws or regulations, shall be prohibited from the sewer system.

(o) In addition to complying with the provisions of Articles 1 through 10 of this chapter, all industrial users shall comply with all applicable requirements set forth in federal categorical pretreatment standards and other applicable federal regulatory standards, applicable state orders and water quality control regulations, wastewater discharge permits and orders issued to the city by federal and state agencies, federal and state pretreatment program approval conditions, local discharge limitations and rules adopted by and regulations promulgated by the director and the city, and any other applicable requirement regulating the discharge of wastewater into the wastewater system. The director is authorized to develop and enforce such local limitations as the director deems necessary for the city's compliance with state and federal laws and requirements and the enforcement of any provision of Articles 1 through 10 of this chapter.

(Added by Ord. 94-46; Am. Ord. 94-73, 01-64, 02-14)

#### Sec. 14-1.10 Right of entry and inspection.

(a) Existing Systems. The department may, during reasonable hours and upon notification to the person with a right to possession, enter any building or premises in the discharge of its official duties to examine or copy records or inspect, investigate, measure or test the wastes discharged or the private sewer connected, directly or indirectly, to the public system as per 40 CFR Section 403.12(o) and to utilize existing sewer lateral cleanouts for the purpose of inspecting, maintaining, or cleaning blockages in the public sewer system.

(b) Inspection of Construction of Sewer System Works.

(1) During the construction of all sewer system works, including private sewers which directly or indirectly connect to the public system, the city shall have access thereto for inspection purposes and if considered advisable by the director, may require an inspector on the job continuously. At no time shall sewers be backfilled or covered until the department has been notified and has given proper inspection and approval. If the work is not approved, it shall be repaired or removed and reconstructed, whichever is directed by the director.

(2) All costs of inspection and testing shall be borne by the owner or subdivider.

(c) Premises of Industrial Users.

(1) Upon showing proper credentials, persons authorized by the director or persons authorized by EPA or DOH, when necessary for the performance of their duties, shall have the right to enter the industrial user's premises during scheduled, unscheduled, announced or unannounced inspections. Such authorized personnel shall have access to any facilities and records necessary for determining compliance, including, but not limited to, the ability to copy any records, inspect any monitoring equipment, and sample any wastewater subject to regulation under this chapter. Notwithstanding any provision of law, persons authorized by the director may enter an industrial user's premises at any time if the director determines that an imminent hazard to persons or property exists on or as a result of activities conducted on the industrial user's premises.

(2) The director may inspect the process areas of an industrial user, inspect chemical and waste storage areas, and inspect, sample and monitor wastewater production activities to determine compliance with the provisions herein and any permit or order issued herein. Inspections may include but are not limited to visual observations of the pretreatment and monitoring facilities, review of the measures undertaken by the industrial user to minimize risks for slug discharges, spills and discharges that would violate any limitations and specific prohibitions, and inspections of any hazardous waste storage areas.

(3) Persons authorized by the director, EPA or DOH may witness any sampling or sampling procedures required of any industrial user as part of a self-monitoring program or an industrial wastewater discharge permit. (Sec. 11-1.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Sec. 14-1.7, R.O. 1990; Am. Ord. 93-04, 94-46)

#### Sec. 14-1.11 Recordkeeping.

All industrial users subject to the reporting requirement of 40 CFR Section 403.12 shall maintain and retain, and make available for inspection and copying by EPA, DOH or city officials, personnel or their agents, all records and information required to be retained herein. All records relating to compliance with pretreatment requirements and standards shall be retained by industrial users for a minimum of three years from the date of any investigation or enforcement action undertaken by EPA, DOH or the city. This period shall be automatically extended for the duration of any litigation concerning compliance with applicable laws. (Added by Ord. 94-46)

### Article 2. Sewer System for New Subdivision

#### Sections:

14-2.1 Generally.

- 14-2.2 Temporary treatment plants—Pumping stations.
- 14-2.3 Construction costs.

Sec. 14-2.1 Generally.

(a) Connection to Public Sewers. In every subdivision where connection to a public sewer system is practicable and reasonable, or where temporary sewage treatment and disposal facilities have been approved by all authorities having jurisdiction, the subdivider shall install a complete sewer system connected to the public sewer or temporary sewage treatment and disposal facility unless such subdivision is for agricultural purposes where the lots are two acres or larger in size and the soil is deemed suitable and adequate for an acceptable private sewage disposal system.

(b) Specifications.

(1) The sewer system shall be of the type and size and at the locations approved by the director provided that these shall not be contrary to the locations fixed for utilities by the city general plan or for sewer system facilities by the department of wastewater management master plans.

(2) The sewer system shall be constructed in accordance with the current standards and specifications of the city. Before the construction of a sewer is commenced, the construction plan therefor shall be approved by the director and by the state department of health pursuant to Part III of HRS Chapter 342D.

(3) A lateral shall be provided to service each lot.

(c) Title to City.

(1) Upon completion of the construction of the subdivision sewer system and any other related new construction and approval of said construction by the department, the subdivider or developer shall convey title of the sewer system to the city for use of the department if required by the director.

(2) Before acceptance of the sewer system by the department, the subdivider shall convey easements covering those portions of the sewer system installed in privately owned areas and shall convey to the city, for the use of the department, fee simple title to all sites on which are located pump stations or treatment plants constructed by the subdivider or developer as part of the public sewer system.

(Sec. 11-2.1, R.O. 1978 (1983 Ed.); Am. Ord. 93-32)

Sec. 14-2.2 Temporary treatment plants—Pumping stations.

(a) Specifications. Where connection to a public sewer is not available, the subdivider may construct temporary treatment and disposal facilities or where gravity service to the public sewer is not possible, the subdivider may construct a temporary pump station; provided, however, that the sewer system, including the temporary treatment plant with pertinent structures, shall be constructed in accordance with the standards and specifications of the department, or other agency having jurisdiction or other standards or requirements as may be established by the director; and provided further, that prior written approval of the director has been obtained as to the necessity for such plant or station.

(b) Title.

(1) The subdivider shall convey the title to the treatment plant or the pump station including the site, in fee to the city for the use of the department, except as provided herein. Acceptance of title and possession to either the plant or station reserves for the department the right to admit sewage or wastewater to either facility from other areas provided that the needs of the subdivider are met for a stipulated period as mutually agreed upon prior to date of conveyance. Title shall revert to the grantor or the grantor's successors or assigns in the event the director finds the plant or the station is no longer needed.

(2) In remote areas where the treatment plant or pump station serves less than 40 lots, or any area where it serves less than 10 lots, the director may require the facility to be owned and maintained as a private system at the owner's or subdivider's expense.

(Sec. 11-2.2, R.O. 1978 (1983 Ed.))

Sec. 14-2.3 Construction costs.

(a) General. Except as otherwise provided herein or by statute, the entire cost of installation of sewer system works within a subdivision and for any new construction required for connection to the public sewers shall be borne by the subdivider or developer.

(b) Temporary Treatment Plant and Temporary or Permanent Pump Station. The entire cost of constructing a temporary treatment plant or a temporary or permanent pump station shall be borne by the subdivider or developer.

(c) Oversize Facilities.

(1) Whenever the director finds that good planning and engineering practice require sewer system works of greater capacity or greater depth than required to serve a subdivision, the director shall require the provisions thereof.

(2) Whenever the director requires a subdivider to install a treatment plant or pump station with pertinent

structures or other sewer system works or sewer lines with an inside diameter of more than eight inches in diameter, which are, in either case, of greater capacity or at greater depth than is necessary to serve the subdivision or other land under the same ownership, which is hereinafter referred to as the "initial subdivider's area," the department shall install or provide for the installation of the same in accordance with the provisions of HRS Chapter 103. Before any contract is let, the subdivider shall pay the department an amount equivalent to the cost of construction of the facilities adequate to serve the "initial subdivider's area," as determined by the director. (Sec. 11-2.3, R.O. 1978 (1983 Ed.))

### Article 3. Sewer System for Other Than in New Subdivisions

#### Sections:

- 14-3.1 Connections within improvement districts.
- 14-3.2 Installation charges.

#### Sec. 14-3.1 Connections within improvement districts.

No lateral installation charge shall be made for one or more original laterals to an original lot which is being or has been assessed in accordance with the improvement district ordinance, unless this lot has later been rezoned for higher usage and the owner desires an additional lateral or the lot is required to be served by a relief sewer which has been or will be constructed to relieve an inadequate existing sewer. (Sec. 11-3.1, R.O. 1978 (1983 Ed.))

#### Sec. 14-3.2 Installation charges.

##### (a) Charge.

(1) For Unsewered Properties. An applicant for sewer service for an unsewered property shall pay the following assessment per square foot of specially benefited area:

- (A) Residential zoned areas 16 cents psf
- (B) Business and industrial zoned areas 20 cents psf
- (C) Hotel and apartment zoned areas 24 cents psf

The benefited area shall be determined by the department.

Upon approval of the application by the department and payment of assessment charge by the applicant, the department will construct the sewer to the property line as soon as possible.

(2) For Sewered Properties Rezoned to Higher Use. For properties with an existing sewer lateral which have been rezoned to higher use after the existing sewer service was provided; and the property is required to be served by a relief sewer which has been or will be constructed to relieve the inadequate existing sewer; shall pay the difference between the rates per square foot of that zoned to higher use and that zoned from, specified in Section 14-3.2 (a)(1).

##### (b) Special Conditions.

- (1) No charge will be made for replacements of lateral sewer installations because of normal deterioration.
- (2) Charges for construction of an additional lateral shall be the actual total cost of the installations, including overhead costs.

(3) A charge shall be made for a lateral sewer which has already been constructed for which no assessment or installation charge has been paid. The charge shall be as specified in subsection 14-3.2 (a)(1).

(Sec. 11-3.2, R.O. 1978 (1983 Ed.))

### Article 4. Private Sewer System

#### Sections:

- 14-4.1 Building or house sewers.
- 14-4.2 Treatment plant—Pumping stations.

#### Sec. 14-4.1 Building or house sewers.

(a) Inspection After Connection. Existing private sewers connected to the public system may be inspected and tested for excessive infiltration whenever deemed necessary by the director. If the rate of infiltration is excessive, the owner, when informed by the director, shall effect approved remedial measures within 30 days. Infiltration in excess of 500 gallons per day per inch of diameter of pipe per mile of pipe shall be considered excessive. The cost of inspection after corrective action has been completed shall be paid by the owner.

(b) Restrictions. All private sewers connected to the public systems shall be governed by the provisions under Section 14-1.6.

(Sec. 11-4.1, R.O. 1978 (1983 Ed.))

Sec. 14-4.2 Treatment plant—Pumping stations.

(a) Existing. The department may agree to operate and maintain existing treatment plants and pump stations if these facilities are upgraded to conform with standards to be established by the director pursuant to Section 14-4.2 (c), and title is conveyed to the city. Title shall revert to the grantor or the grantor's successors or assigns in the event the director finds the plant or the station is no longer needed.

(b) New. Provisions contained in Section 14-2.2 are also applicable to new private treatment plants and pump stations.

(c) The director is authorized to prescribe and enforce rules and regulations to carry out the provisions of this section by establishing procedures and standards for city acceptance of private treatment plants and pump stations.

(Sec. 11-4.2, R.O. 1978 (1983 Ed.))

## Article 5. Industrial Wastewaters

### Sections:

- 14-5.1 Industrial wastewater discharge permit—Violations.
- 14-5.2 Permit application.
- 14-5.3 Change of permit restrictions.
- 14-5.4 Permit suspension.
- 14-5.5 Permit revocation.
- 14-5.6 Industrial wastewater discharge permit revocation or suspension.
- 14-5.7 Wastewater discharge permit modification.
- 14-5.8 Issuance and reissuance of wastewater discharge permit.
- 14-5.9 Transfer of wastewater discharge permit.
- 14-5.10 Compliance schedules.
- 14-5.11 Sampling, analyses and flow measurements.
- 14-5.12 Pretreatment of industrial wastewaters.
- 14-5.13 Liability for damage.
- 14-5.14 Trade secrets.
- 14-5.15 Administrative enforcement.
- 14-5.16 Judicial enforcement of order.
- 14-5.17 Enforcement orders.
- 14-5.18 Appeals.
- 14-5.19 Violation provisions.
- 14-5.20 Injunctive relief.
- 14-5.21 Nonliability of department personnel.

Sec. 14-5.1 Industrial wastewater discharge permit—Violations.

(a) No person shall discharge or cause to be discharged any industrial wastewater into the public sewers or into any private sewer which discharges to the public sewers, without first applying for and obtaining an industrial wastewater discharge permit. Industrial wastewater discharge permits shall meet the following requirements or include the following provisions:

(1) Permits shall be issued by the director for a specified time period, not to exceed five years. A permit may be issued for a period of less than a year or may be stated to expire on a specific date as determined by the director;

(2) No permit shall be transferable without the prior written consent of the director and provision of a copy of the existing permit to the new owner or operator;

(3) Effluent limits based on applicable general pretreatment standards, categorical pretreatment standards, local limits, and state and local law;

(4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable pretreatment standards, categorical pretreatment standards, local limits and state and local law;

(5) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules shall not extend the compliance date beyond applicable federal deadlines;

(6) A statement requiring the notification of a hazardous wastewater discharge in accordance with Section

14-5.12(f);

(7) Recordkeeping requirements as detailed in Section 14-1.11; and

(8) Permittees shall provide the director with written notification upon the discontinuance of their business operations.

(b) This permit may require pretreatment of industrial wastewater before discharge, compliance with a schedule containing commencement and completion dates of events leading to the construction and operation of pretreatment systems, restriction of peak flow discharges, discharge of certain wastewater only to specified sewers, relocation of point of discharge, prohibition of discharge of certain wastewater components, restriction of discharge to certain hours of the day, self-monitoring programs and submission of self-monitoring reports and may include other conditions deemed appropriate by the director to ensure compliance with Articles 1 through 10 of this chapter, and federal and state laws.

(c) No person shall discharge industrial wastewater in excess of the quantity or quality limitations set by the industrial wastewater discharge permit. Any person desiring to discharge wastewater which is not or use facilities which are not in conformance with the permit shall apply to the department for an amended permit.

(d) All self-monitoring submittals required by the permit, and reports filed with the director shall comply with the provisions specified in Section 14-5.11(a)(3).

(e) Industrial users subject to categorical pretreatment standards shall submit baseline monitoring reports. The baseline monitoring report requirements for industrial users in 40 CFR Section 403.12(b), as further detailed in Section 14-5.8 and Section 14-5.11(b)-(c), are incorporated into this section. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in Articles 1 through 10 of this chapter.

(f) All waste haulers shall apply for and obtain an industrial wastewater discharge permit.

(g) With the exception of those industrial users defined by federal regulations as significant industrial users (categorical industrial users), the director may exempt certain industrial users or waste haulers from the requirement to obtain an industrial wastewater discharge permit if the quantity and/or quality of the wastewater or hauled wastewater is deemed to be unlikely to cause obstructions, upset, interference or pass-through in the POTW or result in adverse impact on public health or the environment.

(Sec. 11-5.1, R.O. 1978 (1983 Ed.); Am. Ord. 91-93, 94-46, 01-64)

#### Sec. 14-5.2 Permit application.

In support of the permit application, an industrial user shall submit, in units and terms appropriate for evaluation, all information as required by the director to evaluate the permit application. This information shall include, but not be limited to: industrial process identification; flow rates; wastestream constituents and characteristics; time and duration of discharge; peak discharge amounts; locations of all discharge points; pretreatment facilities; sampling and monitoring equipment and points; description of activities, facilities, and plant processes, including raw materials, processes and types of materials which are or could be produced; number of employees; site diagrams; and flow schematics. Specific information required for application evaluation will be identified in the permit application package. A statement shall be included, which describes possible subcategories that may be applicable, supporting evidence for applicability of each subcategory and certification of factual information. After evaluation of the information submitted, the director shall determine if an industrial wastewater discharge permit is required. If the director so determines, a permit may be issued subject to the terms and conditions provided in this chapter. (Added by Ord. 94-46)

#### Sec. 14-5.3 Change of permit restrictions.

The department may change the restrictions and conditions of a permit from time to time as provided in this article or as required by law. An industrial user shall be allowed a reasonable period of time as determined by the director to comply with any permit modifications. (Sec. 11-5.2, R.O. 1978 (1983 Ed.); Sec. 14-5.2, R.O. 1990; Am. Ord. 94-46)

#### Sec. 14-5.4 Permit suspension.

(a) The director may suspend a permit as provided in this article or by law for a period not to exceed 45 calendar days when such suspension is necessary in order to stop a discharge which presents an immediate hazard or threat to the public health, safety or welfare, to the environment, to the public sewer system, or to those employed by the city.

(b) Any industrial user notified of a suspension of such person's permit shall immediately cease and desist in the discharge of all industrial wastewater to the sewer system. In the event of a failure of the industrial user to comply voluntarily with the suspension order, the director shall take such steps as necessary to insure compliance or invoke penalties as provided in this chapter.

(c) The director may reinstate the permit upon proof of satisfactory compliance with all discharge requirements of the department.

(d) This provision does not preclude a person's right to appeal the director's order as provided herein and by the department's rules and regulations.

(e) The director's order is not stayed pending any appeal.

(Sec. 11-5.3, R.O. 1978 (1983 Ed.); Sec. 14-5.3, R.O. 1990; Am. Ord. 94-46)

#### Sec. 14-5.5 Permit revocation.

(a) The director may order a permit revoked as provided in this chapter or by law or upon a finding that the industrial user has violated a provision of this chapter, or of applicable laws or regulations.

(b) An industrial user whose permit has been revoked shall immediately stop all discharges of any liquid-carried wastes covered by the permit to the sewer system. The director may disconnect or permanently block from the sewer system the industrial sewer connection of any industrial user whose permit has been revoked if such action is deemed necessary by the director to ensure compliance with the revocation order or if the director deems that there is an immediate hazard or threat to the public health, safety or welfare, to the environment, to the public sewer system, or to persons employed by the city.

(c) An industrial user whose permit has been revoked shall apply for a new permit and pay all delinquent fees, charges, penalties, and such other sums as may be due to the department. Costs incurred by the department in revoking the prior issued permit and disconnecting the industrial sewer connection shall be paid by the industrial user before issuance of a new permit.

(d) This provision does not preclude a person's right to appeal the director's order as provided herein and by the department's rules and regulations.

(e) The director's order is not stayed pending any appeal.

(Sec. 11-5.4, R.O. 1978 (1983 Ed.); Sec. 14-5.4, R.O. 1990; Am. Ord. 94-46)

#### Sec. 14-5.6 Industrial wastewater discharge permit revocation or suspension.

Wastewater discharge permits may be revoked or suspended based on violations of this chapter, laws, rules and regulations, or any final judicial order, and including but not limited to the following reasons:

(a) Failure to provide notification to the director of changed ownership or operations pursuant to this article;

(b) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(c) Falsifying self-monitoring reports or late submittal of reports;

(d) Failure to factually report the wastewater constituents and characteristics of its discharge;

(e) Tampering or actions which disrupt the proper functioning of monitoring equipment;

(f) Refusing to allow the city timely access to the facility premises and records;

(g) Failure to meet effluent limitations;

(h) Failure to pay fines;

(i) Failure to pay sewer charges;

(j) Failure to meet compliance schedules;

(k) Failure to complete a wastewater survey or the wastewater discharge permit application;

(l) Failure to provide advance notice of the transfer of the permitted facility;

(m) Non-use or cessation of operations;

(n) Failure to notify the director immediately of all discharges that could cause problems to the POTW and collection system, including slug discharges and specific prohibitions, as defined by Section 14-1.9 and by 40 CFR Section 403.5(b); or

(o) Any discharge that is in violation of any applicable city, state and federal laws and requirements and/or results in any enforcement action by the city, EPA or DOH.

(Added by Ord. 94-46)

#### Sec. 14-5.7 Wastewater discharge permit modification.

(a) The director may modify the wastewater discharge permit for good cause including, but not limited to, the following:

(1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

(2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

(3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(4) Information indicating that the permitted discharge poses a threat to the city's POTW, city personnel, or the receiving waters;

(5) Violation of any terms or conditions of the wastewater discharge permit;

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR Section

403.13;

(8) To correct typographical or other errors in the wastewater discharge permit; or

(9) To reflect a transfer of the facility ownership and/or operation to a new owner/operator in accordance with this section.

The filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.

(b) It is hereby declared a policy of this chapter that any user of the POTW who violates any provision herein shall have the user's wastewater discharge permit suspended or revoked, and, upon due process, be disconnected from the water system and/or have the sewer connection severed.

(1) The procedures for water service disconnection shall be in accordance with the above provisions, and severance of sewer connection shall be in accordance with guidelines established by the director.

(2) If a user violates the discharge prohibitions of this chapter and does not comply with the order issued by the director, then a notice of termination shall be forwarded by registered mail, return receipt requested, certified mail, or personal service, to an authorized representative of an industry, or the occupant(s) and/or owner(s) of record of the property.

(3) The director shall reinstate water service and approve reconnection to the city's sewer system upon proof of the elimination of the noncomplying discharge.

Whenever the director finds that a discharge of wastewater produces an imminent hazard to public health or safety or endangers public or private property, the director shall act immediately to suspend water service and/or sever all pertinent connections to the sewer without giving advance notice or warning whatsoever to said person(s).

(Added by Ord. 94-46)

#### Sec. 14-5.8 Issuance and reissuance of wastewater discharge permit.

An industrial user shall apply for a wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application at least 30 days prior to the expiration of the industrial user's existing wastewater discharge permit. An industrial user shall apply for a wastewater discharge permit for a first-time issuance at least 180 days prior to operations. In the case of a new categorical industrial user or new source, the federal regulations set forth in 40 CFR Section 403.12(b) require that at least 90 days prior to the proposed start-up of operations and discharge, a new source shall submit a baseline monitoring report with information as required in 40 CFR Section 403.12(b)(1)-(5), in addition to the complete industrial wastewater discharge permit application. (Added by Ord. 94-46)

#### Sec. 14-5.9 Transfer of wastewater discharge permit.

In the event that a change in ownership or operations would affect the nature or characteristics of the wastewater discharged, the permittee shall provide, within 20 days of the change, written notice of the change to the director. If applicable, a new permit will be issued to reflect the change. (Added by Ord. 94-46)

#### Sec. 14-5.10 Compliance schedules.

(a) Compliance Schedule Progress Report. The conditions herein shall apply to any compliance schedule required by the director. The schedule shall set forth progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operations). No increment set forth herein shall exceed nine months. The industrial user shall submit a progress report to the director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with steps being taken by the industrial user to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the director.

(b) Report on Compliance with Categorical Pretreatment Standard Deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source, following commencement of the introduction of wastewater into the POTW, any industrial user subject to such pretreatment standards and requirements shall submit to the director a report containing the measurement of flow and pollutant(s) and certification of pretreatment standards being consistently met. If pretreatment standards are not being met consistently, a description of additional operation and maintenance requirements or pretreatment shall be included in the report. For industrial users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR Section 403.6(c), this report shall contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the industrial user's actual production during the appropriate sampling period. All compliance

reports shall be signed and certified in accordance with Section 14-5.11(c).

(c) Periodic Compliance Reports.

(1) Any significant industrial user subject to a pretreatment standard shall, at a frequency determined by the director, but in no case less than twice a year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by such pretreatment standards, and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports shall be signed and certified in accordance with Section 14-5.11(c).

(2) All wastewater samples shall be representative of the industrial user's daily operations and discharge as described in the permit issued to the user. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure to keep the monitoring facility in good working order shall not be grounds for the user to claim that sample results do not properly report the discharge constituents and characteristics.

(3) If an industrial user subject to the reporting requirements of this section monitors any pollutant more frequently than required by the POTW, using the procedures prescribed in Section 14-5.11, the results of this monitoring shall be included in the report.

(Added by Ord. 94-46)

Sec. 14-5.11 Sampling, analyses and flow measurements.

(a) The city may require an industrial user to monitor its discharge into the sewerage system and report the results of the monitoring to the department periodically. These specific monitoring and reporting requirements shall be listed in the industrial wastewater discharge permit. The director, or the director's agent, may require additional monitoring and reporting to document compliance with pretreatment requirements.

(1) Sampling. The industrial user shall sample its discharge into the sewerage system at a frequency provided in the industrial wastewater discharge permit or as deemed reasonable and necessary by the director to demonstrate compliance. The director, at the director's discretion, may require non-permitted industrial users to conduct sampling and analysis. If sampling indicates a violation, the industrial user shall notify the director within 24 hours of becoming aware of the violation and resample within five working days. The results of the resampling shall be submitted to the director within 30 days.

(2) Analytical Procedures. All samples shall be taken, preserved and analyzed in accordance with the procedures outlined in 40 CFR Part 136 (guidelines establishing test procedures for the analysis of pollutants). Where no test procedure is specified by federal regulations, the procedure shall be one that is approved by EPA, or, if there is no EPA-approved procedure, by the city. Unless approved otherwise by the director, all analysis for the specific pollutants and matrix shall be performed by a laboratory certified by DOH.

(3) Sampling Records. For each sampling event, an industrial user shall record and maintain, in accordance with 40 CFR Section 403.12(o)(i)-(v), the following information:

- (A) Date, exact place, method, and time of sampling and the names of the person(s) taking the samples;
- (B) Sample preservation used;
- (C) Dates analysis were performed;
- (D) Chain-of-custody of sample(s);
- (E) Names of those who performed the analyses;
- (F) Analytical techniques and methods used;
- (G) Results of such analyses; and
- (H) Any unusual observations or conditions (equipment sample) noted during acquisition or analysis.

(b) Baseline monitoring reports, reports on compliance with categorical standards, and periodic reports on continued compliance shall contain a statement, reviewed by an authorized representative of the industrial user, as defined in Section 14-1.2 and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(c) Any authorized representative of the industrial user, as defined in Section 14-1.2, signing an application statement or report submitted pursuant to this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sec. 14-5.12 Pretreatment of industrial wastewaters.

- (a) The director may require an industrial wastewater pretreatment system or device to treat industrial wastewater, in complying with pretreatment requirements, prior to discharge into the sewerage system. This may be necessary to restrict or prevent the discharge of certain wastewater constituents, to distribute more equally over a longer time period of any peak discharges, or to achieve any pretreatment result required by the director.
- (b) All pretreatment systems or devices shall be approved by the director but such approval shall not absolve the industrial user of the responsibility of meeting any industrial effluent limitation required by the department.
- (c) The city shall annually publish in the largest daily newspaper a list of industrial users who were in significant noncompliance with applicable pretreatment requirements as defined in Section 14-1.2 during the previous 12 months.
- (d) All industrial users shall immediately notify the director of any discharge which is a potential problem, including slug loading. The city may require any industrial user to develop and implement an accidental discharge/slug control plan. At least once every two years, the city shall evaluate whether each significant industrial user needs such a plan. Any industrial user required to develop and implement an accidental discharge/slug control plan shall submit a plan which addresses, at a minimum, the following:
- (1) Description of discharge practices, including nonroutine batch discharges;
  - (2) Description of stored chemicals;
  - (3) Procedures for immediately notifying the POTW of any accidental or slug discharges. Such notification shall also be given for any discharge which would violate any of the prohibited discharges of this chapter;
  - (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.
- (e) Dilution is prohibited as a substitute for pretreatment as stated in Section 14-1.9(m).
- (f) In the event that hazardous waste is discharged into the sewer system, the industrial user shall notify, in writing, the director, DOH, and EPA. Notification shall include, but is not limited to, the name of the hazardous waste, as set forth in 40 CFR Part 261; EPA hazardous waste number; and the type of discharge (continuous, batch or other).
- (Sec. 11-5.6, R.O. 1978 (1983 Ed.); Sec. 14-5.6, R.O. 1990; Am. Ord. 91-93, 94-46, 96-58)

Sec. 14-5.13 Liability for damage.

- (a) Any industrial wastewater user who discharges or causes a discharge in violation of this chapter or as prohibited by law and regulations which damages the sewer system resulting in costs to the department shall be liable to the department for all such costs incurred thereby, including but not limited to attorney's fees.
- (b) Any person, whether or not doing work for the city or work on a city project, shall provide notice to DOH and the city in accordance with city, state and federal laws and regulations of any leak, spill, or release of sewage from the city's sewer system caused by the person, its agents or its employees. This notice shall be provided as soon as the person becomes aware of the leak, spill, or release of sewage from the city's sewer system as a result of the work of the person, its agents or its employees. Said person shall also be liable to the department for all fines incurred including, but not limited to, attorney's fees, in the event any monetary fines are levied against the city.
- (Sec. 11-5.7, R.O. 1978 (1983 Ed.); Sec. 14-5.7, R.O. 1990; Am. Ord. 94-46, 94-73)

Sec. 14-5.14 Trade secrets.

- (a) With respect to trade secrets, it is determined that the public interest served by not making said records public clearly outweighs the public interest served by the disclosure of said records. Accordingly, any trade secrets acquired by the department in the course of implementation or enforcement of this chapter shall be confidential information and shall not be made public except to that extent necessary to enforce this chapter. Effluent data, however, are not confidential information and shall always be made available to the public.
- (b) Whenever the director makes a written request or issues an order for an industrial user to furnish information, the request or order may contain, in addition to the required information, the following:
- (1) That the industrial user may assert a confidential claim, including but not limited to a trade secret claim covering specified information; and
  - (2) That if no such claim accompanies the information received by the director, the industrial user is deemed to have waived all confidential claims that may exist, and said information may be made available to the public without further notice to the industrial user.
- (c) For purposes of this section in determining confidential information, the director shall determine whether the information is entitled by statute, judicial order, or law to the confidential treatment as claimed by the industrial user. In the absence of such finding, the director shall make the information available for public disclosure.

(Sec. 11-5.8, R.O. 1978 (1983 Ed.); Sec. 14-5.8, R.O. 1990; Am. Ord. 91-93, 94-46)

Sec. 14-5.15 Administrative enforcement.

(a) If the director determines that any industrial user is violating any provision of this chapter, any rule adopted thereunder, or any permit issued pursuant thereto, the director may have the user served by personal service, by registered or certified mail or delivery, with a written notice of violation and order.

(b) Within 30 days of the receipt of this notice, or such shorter period as may be provided in the notice of violation, an explanation of the violation and plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the director. Submission of this plan in no way relieves a person for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation, or before the expiration of the time to respond with a plan.

(c) The director is authorized to seek injunctive relief and/or impose administrative civil penalties for violations of any federal pretreatment standard, provision or condition in any permit, or any requirement of the ordinance.

(Added by Ord. 94-46)

Sec. 14-5.16 Judicial enforcement of order.

The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order was served, a hearing was held or the time granted for requesting a hearing had expired without such a request, the civil fine was imposed, and that the fine imposed had not been paid. (Added by Ord. 94-46)

Sec. 14-5.17 Enforcement orders.

(a) Consent Orders. The director is authorized to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. The order shall include specific action to be taken by the industrial user to correct the noncompliance within a time period to be provided in the order. These orders shall have the same force and effect as other administrative orders issued pursuant to Section 14-5.15 and shall be judicially enforceable.

(b) Show Cause Orders. Whenever the director finds that a discharge of wastewater is taking place or threatening to take place in violation of any requirement imposed by ordinance, regulation or other law, the director may issue a notice of violation and show cause order requesting the industrial user to meet with someone designated by the director. Notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and an order that the industrial user show cause why this proposed enforcement action should not be taken. The notice of hearing shall be served personally or by registered or certified mail (return receipt requested) at least 15 days prior to the hearing. The notice may be served on any authorized representative of the industrial user.

This meeting is not a prerequisite to taking formal enforcement action against the industrial user, and neither does this preclude in any way informal meetings or discussions with the industrial user.

(c) Compliance Orders and Compliance Schedules. Upon a finding by the director that an industrial user has violated or continues to violate the ordinance, a permit or an order issued herein, or any other pretreatment standard or requirement, the director may issue an order to the industrial user responsible for the discharge requiring the user to come into compliance within a period of time specified by the director. These orders may not extend the deadline for compliance established for a federal pretreatment standard or requirement, nor do they release the user from liability for any violation, including a continuing violation. Issuance of a compliance order or a compliance schedule shall not be a prerequisite to taking any other enforcement action against the industrial user.

(d) Cease and Desist Orders. Whenever the director finds that a discharge of wastewater is taking place or threatening to take place in violation of any ordinance, order, regulation, or other law, the director shall issue an order directing the industrial user to cease and desist such discharges and achieve compliance in accordance with a detailed time schedule of specific actions the user shall take in order to correct or prevent violations of this chapter, regulation, order, or any other law. The director may order the revocation or suspension of any permit. Any order issued by the director may require the industrial user to provide information as the director deems necessary to explain the nature of the discharge. The director may require in any cease and desist order that the user pay to the city the costs of any extraordinary inspection or monitoring which in the discretion of the director was deemed necessary as a result of the violation, together with civil penalties. Issuance of a cease and desist order shall not preclude any other enforcement action against the industrial user.

(e) Cleanup and Abatement Orders.

(1) Any industrial user who is in violation of this chapter, regulation, order, or any other law, shall upon the director's order and at the total expense of the user, clean up the discharge and do whatever is necessary or

required by the director to abate the effects of the violation.

(2) The industrial user may be required to initiate any cleanup, abatement, or remedial work that the director deems necessary. Issuance of a cleanup and abatement order shall not preclude any other enforcement action against the user.

(3) Any industrial user violating the ordinance, regulations, order, or any other law shall be liable to the city for costs incurred in the cleanup, abatement, or remedial actions undertaken by the director, including but not limited to administrative costs, inspection costs, attorney's fees and penalties or other liability imposed upon the city by other agencies, persons, or organizations whether by way of court action, administrative action, or settlement.

(f) Termination of Discharge. In addition to other remedies available and as provided in this chapter or by law, when in the discretion of the director the industrial user has not demonstrated or cannot demonstrate satisfactory progress toward compliance with the requirements of the ordinance, regulation, order, or other laws, the director may, after providing written notice to the user by certified mail 30 days in advance of any action, sever or plug the connection from the user's system to the city's sewerage system or otherwise prevent the discharge of wastewater from the user's system to the city's sewerage system.

(g) Administrative Fines. In addition to other remedies available and as provided in this chapter or by law, the director may impose administrative penalties.

(h) Other Enforcement Actions. Nothing herein shall preclude or limit in any manner, state or federal regulatory agencies from undertaking enforcement actions as appropriate as a result of violations pursuant to this chapter to the extent these also constitute violations of applicable federal or state laws, or other pertinent requirements.

(Added by Ord. 94-46)

#### Sec. 14-5.18 Appeals.

(a) The industrial user may petition to appeal the terms of a wastewater discharge permit, its modification, revocation, suspension or denial, or the director's order, including but not limited to enforcement within 30 days of the director's final action on the matter in accordance with the rules and regulations of the department.

(b) (1) Failure to submit a timely petition for appeal shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party shall indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and alternative condition, if any, it seeks to substitute for the provisions objected to in the wastewater discharge permit, or the specific basis for its objections to the permit modification, suspension, revocation or denial, and alternatives, if any, it suggests, or specific grounds for its objection to the director's order.

(3) The effectiveness of the wastewater discharge permit or the director's final action regarding the permit modification, suspension, revocation or denial, or the director's order, including but not limited to enforcement, shall not be stayed pending the appeal.

(4) If the petition for appeal is not acted upon within 30 days by the director, the petition shall be deemed to be denied and the industrial user shall comply with the terms of the permit or the director's final action regarding the permit modification, suspension or revocation, or the terms of the director's order.

(5) The director shall take final action on a permit denial, issuance, modification, or renewal, or the order, including but not limited to enforcement, by sending the permit or the director's order to the applicant by certified mail.

(Added by Ord. 94-46)

#### Sec. 14-5.19 Violation provisions.

(a) Administrative and Civil Penalties. Any person violating any provisions of this chapter, any order, or permit issued hereunder, or any other pretreatment standard or requirement, shall be liable for an administrative or civil penalty of not less than \$1,000.00 per violation per day, except that in cases where such offense shall continue after written notice from the director of such violation, each day's continuance of the same shall constitute a separate offense. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation. In determining the amount of the fine, the director shall consider the seriousness of the violation or violations, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the fine on the violator, and such other considerations, that the director determines in the exercise of the director's discretion, are relevant to the amount of the fine. In addition to the penalties provided herein, the city may recover reasonable attorneys' fees, court costs, court reporters' fees, and other expenses of litigation by appropriate suit at law against the person found to have violated this chapter or the orders, rules, regulations, and permits hereunder.

(b) Criminal Penalties. Any person:

(1) Who intentionally, knowingly, recklessly, or negligently violates any provision of Articles 1 through 5 or 6 through 10, any order or permit issued under one of those articles, or any other pretreatment requirement

shall, upon conviction, be punished by a fine of not less than \$1,000.00 or by imprisonment not exceeding 90 days, or both, except that in cases where such offense shall continue after due notice, each day's continuance of the same shall constitute a separate offense; or

(2) Who knowingly makes any false statement or misrepresentation in any record, report plan, or other document filed with the director, or tampers with or knowingly renders inaccurate any monitoring device or sampling and analysis method required under this section or by other law, shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than six months, or both.

Unless otherwise provided, this subsection shall be controlled by provisions of the Hawaii Penal Code, Hawaii Revised Statutes.

(Added by Ord. 94-46; Am. Ord. 02-14)

#### Sec. 14-5.20 Injunctive relief.

Whenever a user has violated a pretreatment standard or requirement or continues to violate the provisions of Articles 1 through 10 of this chapter, wastewater discharge permits or orders issued hereunder, or any other pretreatment requirement, the city may petition the Circuit Court of the First Circuit, State of Hawaii, or the United States District Court, State of Hawaii, through the city's attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this chapter on activities of the industrial user. Such other action as appropriate for legal and/or equitable relief may also be sought by the city. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against a user. (Added by Ord. 94-46)

#### Sec. 14-5.21 Nonliability of department personnel.

No member, employee, or officer of the department of wastewater management shall be civilly or criminally liable or responsible under this chapter for any acts done under this chapter in the performance of their duties as a member, an officer, or an employee of the city. (Added by Ord. 94-46; Am. Ord. 94-73)

### Article 5A. Commercial FOG Waste and Commercial Cooking Oil Waste

#### Sections:

14-5A.1 Definitions.

14-5A.2 Required transport of commercial FOG waste and commercial cooking oil waste to recycling facility and required conversion to marketable product.

14-5A.3 Penalties.

#### Sec. 14-5A.1 Definitions.

For the purpose of this article:

"Biodiesel or renewable fuel" means the same as that term is defined in Section 2-34.1.

"Commercial cooking oil waste" means cooking oil which, because of prior use, potency loss, or contamination, is no longer usable or salable by a business engaged in cooking food or selling cooking oil. The term does not mean the residue remaining after the conversion of commercial cooking oil waste into a marketable product.

"Commercial pretreatment device" means a pretreatment device that is installed by a business pursuant to Section 14-1.9(h).

"Commercial FOG waste" means animal/vegetable fat, oil and grease and other waste that is retained in or removed from a commercial pretreatment device. The term does not mean the residue remaining after the conversion into a marketable product of grease and other waste removed from a commercial pretreatment device.

"Marketable product" means a salable, tradeable, serviceable, or otherwise valuable product that is produced from the bioconversion, composting, or processing of commercial FOG waste or commercial cooking oil waste.

"Recycling facility" means a facility of a business or other operation engaged in the conversion of commercial FOG waste, commercial cooking oil waste, or both into biodiesel or renewable fuel, compost, or another marketable product. For the purpose of this article, a publicly owned sewage treatment works or privately owned sewage treatment plant shall not be deemed a "recycling facility," even if capable of converting commercial FOG waste or commercial cooking oil waste into sewage sludge.

(Added by Ord. 02-14)

#### Sec. 14-5A.2 Required transport of commercial FOG waste and commercial cooking oil waste to recycling

facility and required conversion to marketable product.

(a) Any person who removes commercial FOG waste or commercial cooking oil waste from a business shall transport the waste to a recycling facility and unload the waste there.

(b) Any person who comes into possession of commercial FOG waste or commercial cooking oil waste at a recycling facility shall either:

(1) Convert the waste into biodiesel or renewable fuel, compost, or another marketable product; or

(2) Transport the waste to another recycling facility and unload the waste there.

(c) The director may, on the director's own initiative, suspend the requirements of subsections (a) and/or (b):

(1) During the period of a work stoppage or any other interruption of recycling transport service or recycling facility service; or

(2) Whenever the director determines that there are inadequate recycling facilities or there is inadequate recycling capacity to dispose of all commercial FOG waste or commercial cooking oil waste in the city at a recycling facility.

(Added by Ord. 02-14)

#### Sec. 14-5A.3 Penalties.

(a) A person shall not intentionally, knowingly, recklessly, or negligently dispose of or unload any commercial FOG waste or commercial cooking oil waste at a place other than a recycling facility in violation of Section 14-5A.2, or otherwise violate this article. "Intentionally," "knowingly," "recklessly," and "negligently" shall have the meanings ascribed to the terms under HRS Chapter 702.

(b) A person who violates subsection (a) shall be guilty of a misdemeanor and subject to a fine of not more than \$2,000, imprisonment of not more than 30 days, or both, for each violation.

(c) In lieu of or in addition to the criminal penalty under subsection (b), a person who violates subsection (a) shall be subject to a civil fine of at least \$500 for each violation. In setting the fine amount, the director shall consider the seriousness of the violation, cost incurred by the city to remedy the negative impacts of the violation, any history of similar violations by the person, any good faith effort to comply with the applicable requirement, and such other factors determined necessary by the director.

To enforce an order by the director imposing a civil fine, the corporation counsel, on behalf of the director, may institute a civil action in a court of competent jurisdiction. This provision shall be deemed the council consent and approval required by Section 2-3.2(b) for bringing the action against a private person.

(d) The penalties under this section are additional to any other penalty that may be imposed on a person for a violation of any other provision of this chapter.

For the purpose of Article 5, a violation of this article shall be deemed a violation of "this chapter" and a violation of "Articles 1 through 10 of this Chapter."

(Added by Ord. 02-14)

## Article 6. Sewer Service Charges

### Sections:

**14-6.1 Liability for payment.**

**(14-6.2 Distinction of rate schedules. Repealed by Ord. 03-32.)**

**14-6.2 Reserved.**

**14-6.3 Customer classifications.**

**14-6.4 Sewer service charge schedules.**

**14-6.4A Determination of residential user discharge.**

**14-6.5 Determination of discharge.**

**14-6.6 Nonresidential strength surcharges.**

**14-6.7 Payment of bills.**

### Sec. 14-6.1 Liability for payment.

(a) All customers who are connected, directly or indirectly, to the public sewer system as defined herein shall pay a sewer service charge.

(b) Where a service contract/agreement exists between any user of the public sewer system and the city which provides for free sewer service, the contract/agreement shall be terminated or renegotiated to provide for payment of sewer services in accordance with the requirements of Section 204 (b)(1)(A) of the Clean Water Act and 40 CFR 35.2140.

(Sec. 11-6.1, R.O. 1978 (1983 Ed.))

(Sec. 14-6.2 Distinction of rate schedules. Repealed by Ord. 03-32.)

Sec. 14-6.2 Reserved.

Sec. 14-6.3 Customer classifications.\*

(a) "Residential" customers have been defined to include only the following:

- (1) Single-family dwellings;
- (2) Duplexes, apartment buildings, condominiums and townhouses;
- (3) Retirement hotels (permanent guests);
- (4) Mobile homes and mobile home parks, if any;
- (5) Housing projects.

(b) "Nonresidential" customers have been defined to include all industrial, commercial, agricultural, governmental and miscellaneous services, plus the following which have been specifically excluded from the above definition of residential customers:

- (1) Military bases (excluding housing units);
- (2) Convalescent homes and sanitariums;
- (3) Hotels, motels, resorts, camps, lodges and guest ranches (transient guests);
- (4) School dormitories and fraternity houses;
- (5) Boardinghouses.

(c) Any customer with both residential and nonresidential usage and a common meter shall be charged as follows: The department shall determine the percentage of the total number of units that are nonresidential and the percentage of the total number of units that are residential. The department shall then apportion the total monthly water usage for the customer between residential and nonresidential units based on these percentages. The customer's bill shall be computed by charging all residential units the applicable residential sewer service charges, and by charging the nonresidential units the applicable nonresidential sewer service charges. The charges shall be from Column 1 or Column 2 of Appendix 14-B, whichever is applicable. The means of determining the amount to charge a customer with both residential and nonresidential usage established by this subsection shall not preclude any customer from apportioning all or any portion of the charge among the various users on any other basis.

(Sec. 11-6.3, R.O. 1978 (1983 Ed.); Am. Ord. 89-80, 03-32)

[\*Editor's Note: Sec. 14-6.3(c) shall take effect on January 1, 2005.]

Sec. 14-6.4 Sewer service charge schedules.

(a) Sewer service charge schedules are listed separately in Appendix 14-B of this chapter.

(b) The department shall review the sewer charge schedule as frequently as may be necessary or proper in order to comply with any agreements with holders of bonds of the city issued to finance facilities constituting part of the public wastewater system, but not less frequently than annually, and recommend to the city council revisions, as necessary, to reflect the actual operation and maintenance costs of the public wastewater system and debt service, reserve and other coverage requirements on bonds of the city issued to finance facilities constituting a part of the public wastewater system.

(c) The department shall annually notify all users of the public sewer system of their current sewer service charge rate and that portion of their rate which is attributable to wastewater treatment services in accordance with 40 CFR 35.2140(c). Notification may be in conjunction with a regular bill, newspaper notice or other means acceptable to the regional administrator of the environmental protection agency.

(Sec. 11-6.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-58, 98-19, 01-52)

Sec. 14-6.4A Determination of residential user discharge.

Residential users may, upon request to the director and the director's approval, be permitted to install and maintain at the user's expense, a water meter for submetering nonsewer water. The property owner shall, at the owner's expense, do any necessary plumbing, subject to departmental inspection, to separate the types of water use and shall provide for the meter to be located adjacent to the primary water meter and within the public right-of-way or at a location approved by the director. (Added by Ord. 97-07; Am. Ord. 98-06)

Sec. 14-6.5 Determination of discharge.

(a) Dischargers using private wells or other private water sources will be required to install, at their own expense, water meters approved by the director for measuring the supplemental water quantity or, alternatively, they will be required to install, at their own expense and at the appropriate location, a calibrated flume, weir, flow meter or similar device approved by the director for measuring wastewater quantity. A flow recording and totalizing register will also be required, and measurements to verify the quantities of waste flows will be performed on a random basis by the department. Residential users not served by the city water system shall be

charged on the basis of the monthly base charge rates provided for in Appendix A.

(b) Because of landscape irrigation or consumptive usage, some nonresidential users may discharge substantially less than 80 percent of their metered water usage to the sanitary sewer system. Those users may, upon request to the director, be permitted to have the amount of water being discharged to the sewer determined by one of the methods listed below. The specific method to be used will be selected by the director based on considerations of cost of installation and anticipated accuracy of the method.

(1) Method One. The user shall install and maintain at the user's expense a calibrated flume, weir, flow meter or similar device approved by the director as to type and location to measure the user's wastewater discharge. In the latter case, a flow meter and totalizing register will be required and measurements to verify the quantity of wastewater flow will be performed on a random basis by the director. The property owner shall install at the owner's expense a suitable vault for installing the flow meter. The vault shall be located on the user's sewer lateral or building sewer at a location approved by the director, and the department shall be granted access rights.

(2) Method Two. The user shall install and maintain at the user's expense a water meter for submetering the water discharging to the public sewer. The property owner shall at the owner's expense do any necessary plumbing subject to department inspection to separate the types of water use and provide for the meter to be located adjacent to the primary water meter and within the public right-of-way or at a location approved by the director.

(3) Method Three. If the director determines that it is impractical for a user to employ method one or method two as a result of physical difficulty or excessive cost, the director may permit the user to estimate the amount of wastewater reasonably anticipated to be discharged to the public sewer. The user's estimate may be based upon average historical water use during wet weather periods or upon any other reasonable basis, and may be based upon flow meter tests if practical. The director shall review the data submitted by the user and may modify the user's estimate, where appropriate. The decision of the director shall be final if method three is utilized. If a user is not satisfied with the determination under method three, the user shall have the right to require at the user's expense utilization of method one or method two for determination of the amount of wastewater discharge to the public sewer.

(Sec. 11-6.5, R.O. 1978 (1983 Ed.); Am. Ord. 89-80)

**Sec. 14-6.6 Nonresidential strength surcharges.**

- (a) In addition to user charges based solely on quantity, nonresidential users shall also be subject to a strength surcharge in accordance with Section 14-1.9(i). A monitoring program shall be initiated by the department to periodically measure the strength characteristics of wastewater discharges from these users, in accordance with Section 14-1.9(k).
- (b) The nonresidential user charge schedule is applicable to domestic strength wastewater having an average suspended solids loading of 200 mg/l. The charge to a nonresidential user whose wastewater loading exceeds 200 mg/l shall be determined by means of the following formula, where  $SSm$  equals the measured suspended solids loading for that user and  $c$  is the user's charge per 1,000 gallons of either water usage or wastewater discharge, whichever is applicable.

$$\text{Charge per 1000 gallons} = c \left[ 0.857 + \frac{0.143(SSm)}{200} \right]$$

- (c) All nonresidential users that discharge wastewater having suspended solids loadings greater than 200 mg/l shall be identified by the department and shall be subject to this strength surcharge, effective upon the completion of construction of Phase II, Sand Island sewage treatment plant.
- (d) Strength surcharges for BOD<sub>5</sub> shall not be levied against nonresidential users until completion of the west and east Mamala Bay secondary treatment facilities, as applicable.
- (e) The actual formulas for water usage and wastewater discharge are shown in the sewer service charge schedules listed separately in Appendix A.
- (Sec. 11-6.6, R.O. 1978 (1983 Ed.); Am. Ord. 96-58, 12-7)

**Sec. 14-6.7 Payment of bills.**

- (a) All bills shall be due and payable upon deposit in the United States mail or upon the presentation to the consumer. Payment shall be made to collectors duly authorized by the city.
- (b) Any bill which is not paid within 30 days after presentation or deposit in the United States mail shall be deemed delinquent and the water service by the board of water supply may be discontinued five business days after written notice is given to the consumer. For consumers not served by the board of water supply, the department may use any reasonable means to effectively terminate the discharge into the public sewer.
- (c) A service fee for handling a dishonored check may be made in accordance with fees established by the department.
- (Sec. 11-6.8, R.O. 1978 (1983 Ed.))

**Article 7. Pumping or Treating of Cesspools****Sections:**

- 14-7.1 Generally.**  
**14-7.2 Requirements.**  
**14-7.3 Service charge.**  
**14-7.4 Payment of bills.**

**Sec. 14-7.1 Generally.**

- (a) Services to Be Provided for.
- (1) Services under this article will be provided only to properties for which a public sewer is not available or accessible and are classified as residential under Section 14-6.3 (a) of this chapter.
  - (2) Services will not be provided to properties classified as nonresidential. Nonresidential properties are required to obtain service from private establishments.

## (b) Procedure.

- (1) An occupant or owner of residential property may request to have a cesspool serviced by the department.
- (2) The department may, at its option, use chemical treatment in lieu of pumping.

(Sec. 11-7.1, R.O. 1978 (1983 Ed.); Am. Ord. 02-60)

**Sec. 14-7.2 Requirements.**

- (a) Maintenance of Cesspool. The owner shall maintain the owner's cesspool in a safe, serviceable condition and readily accessible to the department's crew. Failure to exercise reasonable care to minimize the frequency of servicing may result in termination of pumping or treatment services by the department.
- (b) Replacement and Rehabilitation of Cesspools. Any cesspool requiring one or more pumping per week for a period of three weeks shall be replaced or rehabilitated within 90 days after the owner or person legally responsible has been notified to do so by the director. Failure to take corrective action required by the director may result in termination of pumping services by the department.

(Sec. 11-7.2, R.O. 1978 (1983 Ed.))

**Sec. 14-7.3 Service charge.**

## (a) Pumping.

- (1) A charge shall be made for pumping cesspools. The person requesting the service shall have the choice of either paying on a per-call basis or on a monthly contract basis. A person who elects to be serviced on a contract basis must apply to the department. Except as otherwise provided in this subdivision, no contract shall extend beyond June 30, 2004. After June 30, 2004, the charge for pumping cesspools shall be on a per-call basis only, provided that any owner or occupant whose property is included within a sewer improvement district for which an assessment ordinance has been enacted prior to June 30, 2004, may elect to pay for service on a contract basis until the prescribed deadline in the notice to connect to the sewer system or as may be allowed by an extension to the deadline approved by the director.
- (2) An eligible household shall be entitled to pay reduced per-call cesspool pumping service charges. For purposes of this section, an "eligible household" is that which does not exceed the U.S. Department of Housing and Urban Development (HUD) low-income limit adjusted for family size. The eligible household must apply for a loan through the department of community services housing rehabilitation loan program for wastewater disposal system rehabilitation/reconstruction to rehabilitate or reconstruct their wastewater disposal system. Only if the eligible household does not otherwise qualify for a housing rehabilitation loan program will the eligible household be entitled to pay reduced per-call cesspool pumping service charges, retroactive to the date of initial application for the rehabilitation loan with the department of community services.
- (3) No charge shall be made for pumping a cesspool which is being chemically treated by the city and payment is being made for the service.

(b) Chemical Treatment. A monthly charge shall be made for any cesspool under chemical treatment.

(c) Cesspool Service Charge Schedule. Cesspool service charge schedules are listed in Appendix 14-C of this chapter.

(Sec. 11-7.3, R.O. 1978 (1983 Ed.); Am. Ord. 01-52, 02-60, 04-37)

**Sec. 14-7.4 Payment of bills.**

- (a) All bills shall be due and payable upon deposit in the United States mail or upon other presentation to the consumer. Payment shall be made to collectors duly authorized by the city.
- (b) Any bill which is not paid within 30 days after presentation or deposit in the United States mail shall be deemed delinquent and the water service by the board of water supply may be discontinued five business days after written notice is given to the consumer. For consumers not served by the board of water supply, the department may use any reasonable means to effectively terminate the discharge into the public sewer.
- (c) A service fee for handling a dishonored check may be made in accordance with fees established by the department.

(Sec. 11-7.4, R.O. 1978 (1983 Ed.))

**Article 8. Sewer Fund****Sections:**

- 14-8.1 Creation.**
- 14-8.2 Purpose.**
- (14-8.3 Accounts. Repealed by Ord. 93-04.)**
- 14-8.3 Authority.**
- 14-8.4 Refunds.**

**Sec. 14-8.1 Creation.**

There is created and established a special fund to be known as the “sewer fund.”  
(Sec. 11-8.1, R.O. 1978 (1983 Ed.))

**Sec. 14-8.2 Purpose.**

- (a) All monies received by the city pursuant to the provisions of Section 204 (b)(1)(B) of the Federal Water Pollution Control Act amendments of 1972 (PL 92-500), Section 6-47.1, and Articles 1 through 10 shall be deposited into the sewer fund and shall be appropriated and expended for the purposes authorized by federal or state law, the implementation of Articles 1 through 10, or other purposes specified by ordinance. Notwithstanding the foregoing, except for monies expended for (1) debt service payments on reimbursable general obligation bonds and other financings or (2) repayments of interfund transfers and loans, where the proceeds from such bonds, financings, interfund transfers or loans were used to pay wastewater expenditures that are currently paid for by the sewer fund or sewer revenue bond improvement fund, no monies shall be expended from the sewer fund to reimburse the general fund for expenses incurred in prior fiscal years.
- (b) In addition, all monies received by the city from the board of water supply for the sale or long-term lease or rental of a city-owned treatment works to the board shall be deposited into the sewer fund and shall be appropriated and expended only for the following purposes:
- (1) Land acquisition, planning, design, engineering, construction, inspection, relocation, or equipment necessary for the establishment of a new city-owned treatment works or improvement of an existing city-owned treatment works;
  - (2) Payment of debt service on outstanding sewer revenue bonds;
  - (3) Repayment of an outstanding loan from the state water pollution control revolving fund that was used to construct or improve the sold, leased, or rented city-owned treatment works; or
  - (4) Reimbursement of the federal or state government when the sale or long-term lease or rental to the board of water supply of the city-owned treatment works has violated a term or condition of a federal or state grant that was used to construct or improve the works.

For this subsection, “city-owned treatment works” means a publicly owned treatment works, as defined under Section 14-1.2, that is owned by the city and “long-term lease or rental of a city-owned treatment works” means the lease or rental of all or a portion of a city-owned treatment works that has been approved by the council pursuant to Section 28-4.1.

(Sec. 11-8.2, R.O. 1978 (1983 Ed.); Am. Ord. 94-32, 98-21, 02-14, 02-55, 05-006)

**(Sec. 14-8.3 Accounts. Repealed by Ord. 93-04.)****Sec. 14-8.3 Authority.**

The director of budget and fiscal services shall take any and all actions necessary to effect compliance with the provisions of this article.

(Sec. 11-8.4, R.O. 1978 (1983 Ed.); Am. Ord. 93-04, 02-55)

**Sec. 14-8.4 Refunds.**

Any payments heretofore made pursuant to the “In-Lieu Charges to Tax Exempt Users” prior to the effective date of this section shall be refunded.

(Sec. 11-8.5, R.O. 1978 (1983 Ed.); Am. Ord. 93-04)

**Article 9. Termination of Water Service****Sections:****14-9.1 Authorization.****Sec. 14-9.1 Authorization.**

It has been determined that termination of water service to enforce payment of sewer service charges is necessary and that termination of water service to industrial users for violations pursuant to Section 14-5.7(b) may be necessary. Therefore, the board of water supply is given the authority to terminate water service for delinquency in payment of sewer service charges or pursuant to Section 14-5.7(b) when so directed by the director.

(Sec. 11-9.1, R.O. 1978 (1983 Ed.); Am. Ord. 94-73)

**Article 10. Wastewater System Facility Charges****Sections:****14-10.1 Liability for payment of wastewater system facility charges.****14-10.2 Time of payment.****14-10.3 Residential wastewater system facility charges.****14-10.4 Nonresidential wastewater system facility charges.****14-10.5 Mixed residential and nonresidential wastewater system facility charges.****14-10.6 Reduction of wastewater system facility charges for low-income housing projects.****14-10.7 Waiver of wastewater system facility charges for accessory dwelling unit projects.****14-10.8 Waiver of wastewater system facility charges for affordable dwelling units.****Sec. 14-10.1 Liability for payment of wastewater system facility charges.****(a) New Applicants for Service.**

- (1) All applicants for structures to be completed after the effective date of this article shall be liable for the payment of wastewater system facility charges, provided, they will be served directly or indirectly by the city's wastewater system.
- (2) Applicants for structures on any existing vacant, residential zoned property shall be exempt from paying a system facility charge for connecting one equivalent single-family dwelling unit to the city's wastewater system. In the event more than one equivalent single-family dwelling unit is connected to the system, system facility charges shall be assessed for each additional equivalent single-family dwelling unit connected.
- (3) Applicants for structures on any vacant residential zoned property that is created in accordance with city subdivision rules and regulations after the effective date of this article shall be assessed system facility charges for each equivalent single-family dwelling unit connected to the system.
- (4) Applicants for structures to be completed after the effective date of this article which will initially be served by either private individual wastewater disposal systems or private wastewater treatment plants shall be subject to a deferred wastewater system facility charge. Payment of the deferred charge shall not be required until such time as connection is actually made either directly or indirectly to the city's wastewater system.
- (5) All other applicants for structures to be completed after the effective date of this article which will be served either directly or indirectly by the city's wastewater system shall be subject to the wastewater system facility charge, including federal, state, city, charitable, religious or other tax-exempt entities; except that the wastewater system facility charge shall be reduced for low-income housing projects in accordance with Section 14-10.6.

**(b) Existing Structures.**

- (1) All existing structures as of the effective date of this article which are currently served either directly or indirectly by the city's wastewater system or by private individual disposal systems or treatment plants, shall be exempt from the wastewater system facility charge with respect to their existing wastewater system capacity entitlement. Structures that are determined to be illegal by the city shall not be entitled to any wastewater system facility charge exemption.
- (2) The existing wastewater system capacity entitlement for residential structures shall be based on the number and type of existing dwelling units.



- (3) The existing wastewater system capacity entitlement for nonresidential structures shall be based on the size of the existing water meter serving the existing structures as determined from board of water supply water service records. For those structures served by a private water well, the water meter size shall be determined from the state department of land and natural resources records.
- (4) The owner of an existing residential or nonresidential structure shall be liable for the wastewater system facility charge increment associated with any enlargement of the existing structures or for any increase in the owner's wastewater system capacity entitlement.

(Added by Ord. 90-80; Am. Ord. 04-12)

**Sec. 14-10.2 Time of payment.**

(a) Residential Service.

(1) New Residential Applicants for Service.

- (A) A wastewater system facility charge shall be paid by each new applicant for service as a precondition to the issuance of a building permit by the city, where the new applicant is subject to liability under Section 14-10.1(a); provided that the director of the department of planning and permitting may defer payment of the facility charge for low-income housing projects and city or city-sponsored, or state or state-sponsored housing projects, but in all instances no connection to the city's sewer system shall be allowed until the facility charge is paid. The required payment shall be based on the number and type of dwelling units to be constructed in accordance with Section 14-10.3.
- (B) Wastewater system facility charges for subdivision or development projects shall be paid as a precondition to issuance of building permits for the subdivision by the city. The minimum required payment shall be based on one equivalent single-family dwelling unit per lot. In the event more than one equivalent single-family dwelling unit is constructed per lot, wastewater system facility charges for each additional unit shall be paid as a precondition to the issuance of a building permit by the city; provided that the director of the department of planning and permitting may defer payment of the facility charge for low-income housing projects and city or city-sponsored, or state or state-sponsored housing projects, but in all instances no connection to the city's sewer system shall be allowed until the facility charge is paid. Subdivision or development projects which have received final subdivision approval prior to the effective date of this article shall be exempt from paying the minimum one equivalent single-family dwelling unit charge.

(2) Existing Residential Structures.

- (A) An existing residential structure is exempt from liability under Section 14-10.1 for its existing wastewater system capacity entitlement.
- (B) An applicant for a building permit to enlarge an existing residential structure shall be liable for the wastewater system facility charge increment associated with the enlargement project, based on the number and type of dwelling units to be constructed in accordance with Section 14-10.3. Payment of the charge shall be a precondition to the issuance of a building permit by the city.

For the purposes of this subsection, "city or city-sponsored housing project" shall mean a housing project that is city-owned, city-funded and/or developed pursuant to HRS Section 46-15 or 46-15.2 and/or under HRS Chapter 201G as applicable to the city through HRS Section 46-15.1, "state or state-sponsored housing project" shall mean a housing project that is state-owned, state-funded and/or developed under HRS Chapter 201G, and "low-income housing project" means the same as is defined in Section 14-10.6, provided that a "city or city-sponsored housing project" and a "state or state-sponsored housing project" may also be a "low-income housing project" for purposes of the reduction of the wastewater system facility charges pursuant to Section 14-10.6.

(b) Nonresidential Service.

- (1) New Nonresidential Applicants for Service. A wastewater system facility charge shall be paid by each new nonresidential applicant for service as a precondition to the issuance of a building permit by the city, where the new applicant is subject to liability under Section 14-10.1(a). The required payment shall be based on the procedures indicated in Section 14-10.4.
- (2) Existing Nonresidential Structures.
  - (A) An existing nonresidential structure is exempt from liability under Section 14-10.1(b) for its existing wastewater system capacity entitlement.

- (B) An applicant for a building permit to enlarge an existing nonresidential structure shall be liable for the wastewater system facility charge increment associated with the enlargement project, based on the procedures set forth in Section 14-10.4. Payment of the charge shall be a precondition to the issuance of a building permit by the city.
- (C) An applicant wishing to increase its wastewater system capacity entitlement when no increase in structure size is required, shall be liable for the wastewater system facility charge increment associated with the increase, based on the procedures set forth in Section 14-10.4. Payment of the charge shall be a precondition to the issuance of a building permit by the city.
- (c) Mixed Residential and Nonresidential Service.
  - (1) New Mixed Applicants for Service. A wastewater system facility charge shall be paid by each new applicant for service as a precondition to the issuance of a building permit by the city, where the applicant is subject to liability under Section 14-10.1(a); provided that the director of the department of planning and permitting may defer payment of the facility charge applicable to the residential portion of a city or city-sponsored or state or state-sponsored housing project upon consideration of the applicant’s financial situation, but in all instances no connection to the city’s sewer system shall be allowed until the charge is paid. The required payment shall be based on the procedures set forth in Section 14-10.5.
  - (2) Existing Mixed Structures.
    - (A) An existing structure is exempt from liability under Section 14-10.1(b) for its existing wastewater system capacity entitlement.
    - (B) An applicant for a building permit to enlarge an existing structure shall be liable for the wastewater system facility charge increment associated with the enlargement project, based on the procedures set forth in Section 14-10.5. Payment of that charge shall be a precondition to the issuance of a building permit by the city.
    - (C) An applicant wishing to increase its wastewater system capacity entitlement to accommodate a change in use of the existing structure shall be liable for the wastewater system facility charge increment associated with the increase, based on the procedures set forth in Section 14-10.5. Payment of that charge shall be a precondition to the issuance of a building permit by the city.

For the purposes of this subsection, “city or city-sponsored housing project” shall mean a housing project that is city-owned, city-funded and/or developed pursuant to HRS Section 46-15 or 46-15.2 and/or under HRS Chapter 201E as applicable to the city through HRS Section 46-15.1, and “state or state-sponsored housing project” shall mean a housing project that is state-owned, state-funded and/or developed under HRS Chapter 201E.

(Added by Ord. 90-80; Am. Ord. 95-11, 04-12, 12-7)

**Sec. 14-10.3 Residential wastewater system facility charges.**

- (a) Each applicant for a residential building permit for a new structure, or for an enlargement of an existing structure, shall be required to pay a wastewater system facility charge based on the total number of equivalent single-family dwelling units in the project to be constructed, provided that the director shall reduce the amount of the facility charge upon consideration of the applicant’s financial contribution for backup facilities constructed or to be constructed for the project and dedicated or to be dedicated to the city. This requirement is applicable to those new applicants for service and to those existing structures which are subject to liability under Section 14-10.1.
- (b) The following weights shall be assigned to the various categories of residential developments for wastewater system facility charge purposes:

<b>Description</b>	<b>Number of ESDUs Per Unit</b>
Single-family dwellings, duplexes, triplexes and quadraplexes	1.0
Multiple-family dwellings (five units or more), condominiums, townhouses, retirement homes, mobile homes and housing projects	0.7

- (c) The applicable wastewater system facility charge per ESDU is set forth in Appendix 14-D of this chapter. (Added by Ord. 90-80; Am. Ord. 01-52)

**Sec. 14-10.4 Nonresidential wastewater system facility charges.**

- (a) Each applicant for a nonresidential building permit for a new structure, or for an enlargement of an existing structure, or for an increase in the wastewater system entitlement shall be required to pay a wastewater system facility charge based on the imputed number of equivalent single-family dwelling units in the project to be constructed, provided that the director shall reduce the amount of the facility charge upon consideration of the applicant’s financial contribution for backup facilities constructed or to be constructed for the project and dedicated or to be dedicated to the city.  
This requirement is applicable to those new applicants for service and to those existing structures which are subject to liability under Section 14-10.1.
- (b) The new applicant for service, or an owner wishing to increase the owner’s wastewater system capacity entitlement, shall be required to obtain from the board of water supply, or from the state department of land and natural resources in the case of private water wells, the size of water meter to be provided for the project to be constructed. The number of ESDUs shall be determined from the following table based on the water meter size:

Meter Size (in inches)	Number of ESDUs
5/8	1
3/4	1
1	2.4
1 1/2	5.8
2	13
3	33
4	57
6	87

- (c) The applicable wastewater system facility charge per ESDU for domestic strength wastewater is set forth in Appendix 14-D of this chapter.
- (d) With respect to wastewater strength, a reasonable estimate of the suspended solids loading shall be consistent with the estimates utilized by the department for strength surcharge purposes, in accordance with Section 14-6.6.
- (e) The applicable wastewater system facility charge for extra-strength wastewater shall be based on the following formula:

$$\text{Wastewater System Facility Charge for extra-strength wastewater} = A + ((SSi/200) \times B);$$

where SSi = the imputed suspended solids loading, in mg/L.

The applicable values for terms “A” and “B” in the above formula are set forth in Appendix 14-D of this chapter.

- (f) All nonresidential applicants who are liable for payment under this article may install a sub-water meter to monitor their sewage discharge.  
(Added by Ord. 90-80; Am. Ord. 01-52)

**Sec. 14-10.5 Mixed residential and nonresidential wastewater system facility charges.**

- (a) Each applicant for a building permit for a new structure, or the owner of an existing structure who wishes to increase the owner’s wastewater system capacity entitlement, shall be required to pay a wastewater system facility charge based on the number of equivalent single-family dwelling units in the project to be constructed. This requirement shall be applicable to those new applicants for service and to those existing structures which are subject to liability under Section 14-10.1.
- (b) The new applicant for service, or the owner of an existing structure who wishes to increase the owner’s current wastewater system capacity entitlement, shall be required to install a sub-water meter to monitor the water flow to the nonresidential units. The number of ESDUs shall be determined in accordance with Section 14-10.3 for the residential units and Section 14-10.4 for the nonresidential units.  
(Added by Ord. 90-80; Am. Ord. 12-7)

**Sec. 14-10.6 Reduction of wastewater system facility charges for low-income housing projects.**

- (a) A developer of low-income housing may apply for a reduction of wastewater system facility charges in accordance with this section.
- (b) An applicant for a reduction of wastewater system facility charges shall provide the city with information, as prescribed by the director, to demonstrate that the applicant is developing a low-income housing project and otherwise qualifies for a reduction of the city's wastewater system facility charges.
- (c) If the city determines that an applicant qualifies for a reduction of the wastewater system facility charges, the city shall reduce the charges only for those housing units in the applicant's housing project that are to be sold or rented to low-income households. The reduced charges shall be as provided in Appendix 14-D(2).
- (d) For the purposes of this section:
  - (1) "Low-income" means the same as is defined in Section 8-10.20;
  - (2) "Low-income housing project" means a housing project in which at least 25 percent of the units are reserved for rent for low-income housing pursuant to an agreement with the county, state or federal government, or reserved for sale to low-income households;
  - (3) "Low-income housing unit" means a housing unit in the applicant's housing project that is sold or rented to a low-income household; and
  - (4) "Director" means the director of environmental services.
- (e) If a developer to whom a reduction has been granted under this section sells a low-income housing unit in a low-income housing project to other than a low-income household, or rents a low-income housing unit in a low-income housing project to other than a low-income household within any period in which the sale or rental of the unit is prohibited by any agreement with the county, state or federal government, the developer shall notify the director of environmental services within 30 days of such sale or rental and shall, within such 30-day period, pay to the city the difference between the wastewater system facility charge that would have been applicable under Appendix 14-D(1), and the reduced charge that was paid under Appendix 14-D(2), plus interest on the difference at eight percent per annum from the date of payment of the reduced wastewater system facility charge for the housing unit.
- (f) In accordance with HRS Chapter 91, the director may adopt rules having the force and effect of law for the implementation, administration and enforcement of this section.

(Added by Ord. 04-12)

**Sec. 14-10.7 Waiver of wastewater system facility charges for accessory dwelling unit projects.\***

The wastewater system facility charges, as set forth in Appendix 14-D of this chapter, for the creation of an "accessory dwelling unit," as defined in Section 21-10.1, will be waived. The wastewater system facility charges that were collected for the creation of "accessory dwelling units" from the effective date of Ordinance 15-41 (September 14, 2015), will be reimbursed if requested by the permittee.

(Added by Ord. 16-19)

**Sec. 14-10.8 Waiver of wastewater system facility charges for affordable dwelling units.\*\***

- (a) Wastewater system facility charges, as set forth in Appendix 14-D of this chapter will be waived for the following:
  - (1) Affordable dwelling units as defined in and as provided on-site or off-site pursuant to Chapter 38;
  - (2) Affordable dwelling units provided pursuant to a planned development-transit permit pursuant to Section 21-9.100-10, or an interim planned development-transit permit pursuant to Section 21-9.100-5;
  - (3) Affordable rental dwelling units developed in compliance with HRS Section 201 H-36(a)(5); or
  - (4) Affordable rental housing units that are rented to households earning 100 percent and below of the AMI, and rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent of the AMI for the applicable household size or less, pursuant to Chapter 42.
- (b) An applicant for a waiver of wastewater system facility charges under this section must provide the city with information, as prescribed by the director, to demonstrate that the applicant qualifies for the waiver.

(Added by Ord. 18-1; Am. Ord. 19-8)

\***Editor's Note:** Section 14-10.7 will be repealed on June 30, 2020, in accordance with Ord. 17-30.

\*\***Editor's Note:** Amendments made to Chapter 14, Article 10 in Ordinance 18-1 will be repealed on June 30, 2027, in accordance with Ordinance 18-1. Amendments made to Section 14-10.8 in Ord. 19-8 will be repealed on February 28, 2024, in accordance with Ord. 19-8.



**(Article 11. Penalty for Sewers. Repealed by Ord. 94-73.)****Article 11. Use of Indigenous and Polynesian Introduced Plants in Public Landscaping****Sections:**

- 14-11.1 Definitions.**
- 14-11.2 Implementation.**

**Sec. 14-11.1 Definitions.**

As used in this article unless the context otherwise requires:

“City” means the City and County of Honolulu.

“Facility” means any physical improvement owned by the city or used for city purposes such as municipal buildings, police stations, fire stations, satellite city halls and recreation centers.

“Indigenous” means any land plant species growing or living naturally in Hawaii without having been brought to Hawaii by humans.

“Polynesian introduced” means any plant species brought to Hawaii by Polynesians before European contact, such as kukui, noni, and coconut.

(Added by Ord. 14-6)

**Sec. 14-11.2 Implementation.**

Wherever and whenever feasible, all plans, designs, and specifications for new or renovated landscaping of any building, complex of buildings, facility, complex of facilities, park, or housing developed by the City with public moneys shall incorporate indigenous and Polynesian introduced plant species, provided that:

- (1) Suitable cultivated plants can be made available for this purpose without jeopardizing wild plants in their natural habitat; and
- (2) Wherever and whenever possible, plants indigenous to Oahu shall be used.

(Added by Ord. 14-6)

**Article 12. Drainage, Flood and Pollution Control****Sections:**

- 14-12.1 Legislative findings—Intent.**
- 14-12.2 Definitions.**
- 14-12.3 Adequacy of drainage.**
- 14-12.4 Considerations.**
- 14-12.5 Approval of drainage plans.**
- 14-12.6 Exceptions.**
- 14-12.7 Determination of boundary lines.**
- 14-12.8 Buildings adjacent to drainage facilities.**
- 14-12.9 Subdivision drainage facilities.**
- 14-12.10 Open drainways.**
- 14-12.11 Fences along improved channels.**
- 14-12.12 Connection to city-owned separate storm sewer system—Violation.**
- 14-12.13 Allocation of costs.**
- 14-12.14 Improvements under the improvement district assessment ordinance.**
- 14-12.15 Election by property owners to pay additional amounts.**
- 14-12.16 Land requirements and maintenance of drainage facilities.**
- 14-12.17 Exception.**
- 14-12.18 Inequities.**
- 14-12.19 Provisions subject to state statutes.**
- 14-12.20 Federal aid projects.**
- 14-12.21 Approval denied.**

- 14-12.22 Discharge of effluent other than storm water runoff—Violation.**
- 14-12.23 Environmental quality control—Violation.**
- 14-12.24 Administrative enforcement.**
- 14-12.25 Judicial enforcement of order.**
- 14-12.26 Enforcement.**
- 14-12.27 Appeals.**
- 14-12.28 Violation provisions.**
- 14-12.29 Injunctive relief.**
- 14-12.30 Nonliability of department personnel.**
- 14-12.31 Rule-making powers.**
- 14-12.32 Decisions of the chief engineer.**

**Sec. 14-12.1 Legislative findings—Intent.**

- (a) The council of the City and County of Honolulu finds that:
  - (1) (A) Heavy rain storms have periodically created destructive floods in certain areas of the city threatening the lives of its inhabitants and causing heavy damage to property;
  - (B) The continued development of these areas without providing adequate drainage and appropriate flood control measures would only aggravate the conditions conducive to flooding; and
  - (C) Every effort should be made to minimize flood damage potential and to protect the lives and property of the inhabitants of the City and County of Honolulu.

- (2) There is a growing need to protect our city's natural watercourses and other vital water resources from contamination and pollution.
  - (3) Natural methods of drainage and soil infiltration, which absorb and slowly release runoff, are preferred methods of storm water management.
- (b) Therefore, the council deems it necessary to enact the ordinance codified in this article for the sound, economic development of the City and County of Honolulu and in the interests of the health, safety and general welfare of the inhabitants of the City and County of Honolulu.
- (Sec. 16-6.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-34)

#### Sec. 14-12.2 Definitions.

As used in this article, the following definitions shall apply unless the context indicates otherwise:

“Best management practices” or “BMPs” means pollution control measures, applied to nonpoint sources, on-site or off-site, to control erosion and the transport of sediments and other pollutants which have an adverse impact on waters of the state. BMPs may include a schedule of activities, the prohibition of practices, maintenance procedures, treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, or drainage from raw material storage.

“Chief engineer” means the director and chief engineer of the department of public works, or the director and chief engineer's authorized representative.

“City” means the City and County of Honolulu.

“City standards” means the storm drainage standards approved by the chief engineer, a copy of which shall be on file in the division of engineering, department of public works. These standards are intended to be minimum standards only and are not to be construed as a guarantee to property owners adjacent to a drainage facility against flood or drainage damage.

“Department” means the department of public works, City and County of Honolulu.

“Developer” means one who causes land to be developed.

“Development” means land which is being developed or developed lands.

“Discharge” means the deposit, disposal, injection, dumping, spilling, leaking or placing of any substance into a drainage facility or natural watercourse.

“Domestic wastewater” means the water-carried wastes produced from noncommercial or nonindustrial activities and which result from normal human living processes.

“Drainage facility” means any city drainage structure or separate storm sewer system, including stream structures, constructed principally for the conveyance of storm and surface waters, street wash, or drainage.

“Drainage problem” means the discharge of effluent or a pollutant onto a public right-of-way and/or into a drainage facility which causes the hydraulic capacity of that drainage facility to be exceeded and results in flooding. This definition includes the discharge of a pollutant which reduces the hydraulic capacity of a drainage facility by the deposit of solids therein.

“Effluent” means any substance other than storm water runoff that is discharged onto a public right-of-way and/or into a drainage facility including nonstorm water discharges which are not sources of pollutants, and any NPDES-permitted discharges.

“Engineering control facility” means any drainage device such as a basin, well, pond, ditch, dam, or excavation used for the temporary or permanent storage of storm water by means of detention, retention, divergence, or infiltration for the purpose of reducing storm water volume and/or peak storm discharge flows, and which may provide gravity settling of particulate pollutants. It includes but is not limited to detention ponds, retention ponds, infiltration wells or ditches, holding tanks, diversion ditches or swales, drainpipes, check dams, and debris basins.

“Flood” or “flooding” means the inundation to a depth of three inches or more of any property not ordinarily covered by water. The terms shall not apply to inundation caused by tsunami wave action.

“Hazardous substance” means the same as that term is defined in HRS Section 342D-38.

“Industrial wastewater” means all water-carried wastes and wastewater, excluding domestic wastewater.

“Maximum extent practicable” or “MEP” means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint source pollution control practices, technologies, processes, siting criteria, operating methods or other alternatives.

“National Pollutant Discharge Elimination System permit” or “NPDES permit” means the permit issued to the city pursuant to Title 40, Code of Federal Regulations, Part 122, Subpart B, Section 122.26(a)(1)(iii), for storm water discharge from the city's separate storm sewer systems; or the permit issued to a person or property owner for a storm water discharge associated with industrial activity pursuant to Title 40, Code of Federal Regulations, Part 122, Subpart B, Section 122.26(a)(1)(ii), or other applicable sections of Part 122; or the permit

issued to a person or property owner for the discharge of any pollutant from a point source into state waters through the city's separate storm sewer system pursuant to Hawaii Administrative Rules, Chapter 11-55, "Water Pollution Control."

"Person" means and includes corporations, estates, associations, partnerships and trusts, as well as one or more individuals.

"Pollutant" means any waste, cooking or fuel oil, waste milk, waste juice, pesticide, paint, solvent, radioactive waste, hazardous substance, sewage, dredged spoils, chemical waste, rock, sand, biocide, toxic substance, construction waste and material, and soil sediment. The term also includes commercial FOG waste as defined under Section 14-5A.1.

"Pollution problem" means the discharge of any pollutant into state waters directly or by conveyance through a drainage facility which creates a nuisance or adversely affects the public health, safety or welfare, or causes a drainage facility to violate any provisions of the city National Pollutant Discharge Elimination System permit or violates any water quality standards of the State of Hawaii.

"Private storm drain connection" means any conveyance of storm water, including but not limited to any drainage pipe, ditch, or swale connected to any drainage facility or separate storm sewer system, including any curb or gutter.

"Property owner" means the fee simple owner of record, lessee of record, administrator, administratrix, executor, executrix, personal representative, receiver, trustee, property management agent, or any other individual, corporation, or unincorporated association who has the use, control or occupation of land with claim of ownership, whether the owner's interest be in absolute fee or a lesser estate.

"Redevelopment" means developed land, which is subsequently subdivided or redeveloped or renovated.

"Relief drain" means an additional drainage facility or an enlarged facility constructed in place of any existing drainage system.

"Remedial work" means the construction or installation of catch basins or other devices to resolve localized drainage problems.

"Separate storm sewer" means a conveyance or system of conveyance including city roads and streets with drainage systems, catch basins, curbs, gutters, ditches, man-made channels, or storm drains owned by the city, and designated or used for collecting or conveying storm water.

"State waters" means the same as that term is defined in HRS Section 342D-1.

"Storm water" means storm water runoff, surface runoff, street wash, or drainage and may include discharges from fire fighting activities.

"Storm water runoff associated with industrial activity" means storm water discharge associated with industrial activity as defined in Title 40, Code of Federal Regulations, Part 122, Subpart B, Section 122.26(b)(14).

"Water quality standards" means the water quality standards adopted by the State of Hawaii pursuant to HRS Section 342D-5.

(Sec. 16-6.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 92-122, 96-34, 02-14)

#### Sec. 14-12.3 Adequacy of drainage.

No building permit shall be issued without the prior written approval of the chief engineer as to the adequacy of drainage within the areas designated by the shaded portions on the maps attached to the adopting ordinance and incorporated by reference as: Exhibit A - Waimanalo; Exhibit B-1 - Kailua-Kaneohe; Exhibit C - Kaneohe-Heeia; Exhibit D-1 - Heeia-Kahaluu; Exhibit E-1 - Kaalaea-Kahaluu; Exhibit F - Waiahole-Kualoa; Exhibit G - Kaaawa-Kahana; Exhibit I - Pupukea-Paumalu; Exhibit J - Waianae Kai-Makaha; Exhibit K - Lualualei-Nanakuli; Exhibit L - Pearl City-Waimalu; and Exhibit M - Niu Valley. (Sec. 16-6.3, R.O. 1978 (1983 Ed.))

#### Sec. 14-12.4 Considerations.

In making a determination as to the adequacy of drainage the chief engineer shall consider topographic conditions, rainfall, runoff, land use, depth and width of drainage channels, size of other drainage facilities, and past history of flooding, including the extent of flooding. (Sec. 16-6.4, R.O. 1978 (1983 Ed.))

#### Sec. 14-12.5 Approval of drainage plans.

Any applicant for a building permit for the construction of a structure within the areas indicated in Exhibits A through M, mentioned in Section 14-12.3, shall submit plans for the improvement or construction of drainage facilities to the chief engineer for approval. Upon approval of such plans the applicant shall be entitled to the issuance of the building permit, if all other requirements of law have been complied with. (Sec. 16-6.5, R.O. 1978 (1983 Ed.))

#### Sec. 14-12.6 Exceptions.

If the application for a building permit otherwise qualifies under Chapter 16 and under all other applicable laws, rules and regulations, the provisions of Section 14-12.3 shall not apply to the issuance of a building permit

for the following work:

- (a) To perform work permitted under Section 301 of the Uniform Building Code on a building or structure dislocated or damaged by floods or rains. This exception shall not extend to the moving or relocation of a building or structure into another area within which the issuance of building permits is prohibited, as designated in Section 14-12.3.
- (b) To perform work permitted under Section 301 of the Uniform Building Code necessary or required to make an existing building or structure comply with applicable laws, rules and regulations.
- (c) To perform alterations or repairs to an existing structure or building which will not increase the number of inhabitants in said structure or building.
- (d) To erect temporary structures, not for residential purposes, as permitted by Chapter 16.

The "Uniform Building Code" means the Building Code, as amended and adopted under Chapter 16, Article 1. (Sec. 16-6.6, R.O. 1978 (1983 Ed.); Am. Ord. 96-58)

#### Sec. 14-12.7 Determination of boundary lines.

In the event of a dispute as to whether the property or proposed work of an applicant for a building permit falls within any area indicated by Exhibits A through M mentioned in Section 14-12.3, the chief engineer shall determine from the plot plan submitted by the applicant the location of the property and the proposed work in relation to the reference points on the applicable exhibit. The decision of the chief engineer shall be final. (Sec. 16-6.7, R.O. 1978 (1983 Ed.))

#### Sec. 14-12.8 Buildings adjacent to drainage facilities.

All applications for a building permit for buildings or structures which will be located on property adjacent to any drainage facility shall be submitted to the chief engineer for review. (Sec. 16-6.8, R.O. 1978 (1983 Ed.))

#### Sec. 14-12.9 Subdivision drainage facilities.

(a) In the case of subdivisions, the owner shall dedicate and the city accept the land or any interest in land necessary for the drainage facilities which are constructed to city standards and which are to be maintained and repaired (and operated as the case may be) by the city pursuant to HRS Section 265A-1, by way of easements or in fee simple as determined by the chief engineer. The land document for stream improvements shall include the following covenant:

That the grantor shall include in all conveyances of its land in the vicinity of the stream improvement area a statement that the drainage structure was designed and constructed by the grantor or the grantor's authorized agent or developer to at least meet the minimum criteria set forth in the storm drainage standards of the city, dated , but that the city does not guarantee that the drainage structure is adequate to confine all flood waters to the stream improvement area.

(b) In the case of subdivisions, drainage facilities which only serve private properties shall have easements in favor of the affected property owners. This includes interceptor ditches.

(c) Before the subdivision of any land is approved by the chief engineer, the chief engineer shall check the subdivision plans against the areas of possible inundation in the watershed area as shown shaded on the maps incorporated by reference in Section 14-12.3. Such possible inundated areas are to be designated "possible flood areas." No subdivision shall be approved by the chief engineer unless all lots in a subdivision which are wholly or partially within the "possible flood area" designation have been subjected to the following encumbrance and noted as a legend on the subdivision map to the effect that:

This lot (Lots ) is(are) in a "possible flood area." All existing drainage structures have been designed and have been or are being constructed to at least meet the minimum criteria set forth in the storm drainage standards of the city; however, the city does not guarantee that the drainage structures will confine all flood waters to the drainage facilities at all times.

(d) The developer shall pay the entire cost of the drainage facilities to satisfy the anticipated drainage requirements of all surface water which may flow through or over the proposed subdivision.

(e) Where city standards require drainage facilities of greater capacity than necessary to serve the land being subdivided or developed, in order to dispose of water diverted or concentrated by the city into such drainage system, the city may pay the difference in costs of materials and excavation, if any. The cost of materials to the city shall be based on the costs of the materials delivered at the site. Upon a determination by the chief engineer that such larger facilities are required, and if the provisions of HRS Chapter 103, or any amendatory act thereto, are applicable, the property owner shall deposit with the city an amount equal to the cost of construction of the drainage facilities allocable to the property owner's land, based upon current city cost data for comparable

installations, but the amount paid by the property owner shall be adjusted, if necessary, on the basis of final costs.

(f) The chief engineer may require the construction of permanent detention or retention drainage structures or other engineering control facilities to contain or divert storm water runoff to satisfy the anticipated drainage requirement of all surface waters which may flow through or over the proposed subdivision, or to meet any conditions of the city's NPDES permit. When required, such facilities will be constructed to provide gravity settling of sediments, suspended solids, and other particulate pollutants.

(g) The chief engineer shall, pursuant to federal requirements, establish controls on the timing and rate of discharge of storm water runoff from any new development or redevelopment as may be appropriate to reduce storm water runoff pollution to the maximum extent practicable through the implementation of best management practices (BMPs) and engineering control facilities, designed to reduce the generation of pollutants. This may, where feasible and pursuant to city standards, include limiting peak storm water runoff rates for storms of higher frequencies to predevelopment levels.

(Sec. 16-6.9, R.O. 1978 (1983 Ed.); Am. Ord. 92-122, 96-34)

#### Sec. 14-12.10 Open drainways.

(a) Open drainways, such as streams, ravines, channels and ditches, shall not be covered or modified except when the chief engineer determines that such covering or modification of the open drainways will not be dangerous to the public health, safety and welfare.

(b) If a property owner desires, at the property owner's own cost, that an open drainway be covered or modified, the property owner shall submit all the pertinent data to substantiate the desirability of covering or modifying such a facility, including data showing that the function of the facility will not be hampered. The construction plans for such covering or modification shall be approved by the chief engineer.

(Sec. 16-6.10, R.O. 1978 (1983 Ed.))

#### Sec. 14-12.11 Fences along improved channels.

(a) The chief engineer may require that fences be constructed as part of any channel improvement based upon a consideration of the height of the wall or bank, or shape of the channel, or the land use of the adjoining properties, or the depth of normal flow in the channel, or the location of the channel improvement and/or the possibility of people injuring themselves because of the channel improvement.

(b) Fences when required shall generally be erected on or immediately adjacent to the channel walls and they shall be maintained and repaired by the city.

(c) The minimum height of such fences shall be 42 inches.

(Sec. 16-6.11, R.O. 1978 (1983 Ed.))

**Sec. 14-12.12 Connection to city-owned separate storm sewer system—Violation.**

- (a) Private Storm Drain Connection Licenses.
- (1) All connections from nonmunicipal and private drainage systems to the city-owned separate storm sewer system shall require a storm drain connection license issued by the chief engineer.
  - (2) The license may require if applicable a description of the property owner activity and/or standard industrial classification code which best reflects the principal products or services, and a description and/or analysis of the effluent to be discharged from the private drainage system into the city-owned system. No license is transferrable without the prior written consent of the chief engineer.
  - (3) Nonstorm water discharge into the city-owned separate storm sewer system may be allowed if the discharge has been issued an NPDES permit from the department of health, State of Hawaii, or the United States Environmental Protection Agency, subject to requirements herein.
  - (4) The chief engineer, or the chief engineer's authorized representative, shall be authorized to enter any property, building or premises in the discharge of the chief engineer's official duties to inspect or investigate, measure or test any effluent that is discharged in a private drainage system connected, directly or indirectly, to the city-owned system.
  - (5) Effluent, including NPDES-permitted discharges and nonstorm water discharges, which are not sources of pollutants, may be allowed into a private drainage system, connected directly or indirectly to the city-owned system.
  - (6) All required analysis submitted by property owners on the characteristics of the constituents in the discharge shall be performed by qualified personnel in a laboratory acceptable to the chief engineer.
  - (7) The chief engineer may condition the granting of the license with requirements to prevent drainage and/or pollution problems or mitigative measures which will meet any conditions of the city NPDES permit.
  - (8) Where a private drainage system is common to one or more parcels and is owned by more than one property owner, each property owner is required to have a private drain connection license and be responsible for the maintenance of the common private drainage system.
  - (9) Failure of the property owner(s) to obtain a license shall be a violation of the provisions of Article 12.
- (b) Private Storm Drain Connection License Agreement. A property owner may be allowed to connect the property owner's private drainage system to the city-owned separate storm sewer system if the chief engineer determines that the existing system is adequate to accommodate the potential peak-designed flows of both systems, and if the property owner agrees to the following conditions:
- (1) That the property owner shall bear the entire cost of engineering, construction and maintenance of the private drainage system.
  - (2) That the property owner shall indemnify and hold the city free and harmless from all suits and actions caused by the property owner's acts or failure to act in connection to the city-owned system.
  - (3) That the construction of the drain connection shall be made in accordance with plans and specifications approved by the chief engineer, and subject to compliance by the property owner with applicable provisions of this section including conditions if any and all applicable statutes, ordinances, and rules and regulations of federal, state or city agencies having the effect of law.
  - (4) That no additions or alterations to the private drainage system will be made without the prior written consent of the city.
  - (5) That the private drainage system shall remain the property owner's property.
  - (6) That in the event the private drainage system within the public right-of-way shall at any time interfere with any public use, the property owner shall relocate the private drainage system at the property owner's expense.
  - (7) That in the event any portion of the city-owned separate storm sewer system is damaged or destroyed during the construction of the private storm drain connection, the property owner shall bear the entire cost of engineering and construction, or replacement of the damaged facility.
  - (8) That in the event the discharge into the city-owned system includes storm water discharge associated with industrial activity, the property owner shall have an NPDES permit and provide data on the characteristics of the constituents, quantity of the effluent and discharge at the property owner's expense within one year after the date of connection, and annually thereafter or as the need may arise as determined by the chief engineer.

- (9) That any time the property owner or anyone using the property owner's property, discharges pollutants or other objectionable material which exceeds applicable water quality standards into the city-owned system or otherwise misuses the system, or causes a violation of any provisions of the city NPDES permit, the discharge shall be deemed a violation of this section and the city by written notice may terminate this license.
- (c) Termination of License Agreement.
- (1) The chief engineer may order a license to be terminated upon finding that the property owner has violated a provision of the agreement or any provisions of this section.
  - (2) A property owner whose license has been terminated shall immediately stop the discharge of any pollutant if applicable covered by the license into the city-owned separate storm sewer system. The chief engineer may disconnect or permanently block from the city-owned separate storm sewer system, the private storm drain connection from any property owner whose license has been terminated if such action is necessary to insure compliance with the order of termination.
  - (3) A property owner whose license has been terminated may apply for a new license and pay all delinquent charges, penalties, and such other sums as may be due to the city. Any cost that might be incurred by the city in terminating the prior license and disconnecting the private storm drain connection shall be paid by the property owner before issuance of a new license.
- (d) Private Storm Drain Connections.
- (1) All licenses for private storm drain connections to the city-owned separate storm sewer system issued to the property owner of record shall remain in force. The city may reissue new license agreements for those connections which are discharging nonstorm waters or any effluent which requires an NPDES permit into the city-owned separate storm sewer system.
  - (2) Any private storm drain system that is connected to the city-owned separate storm sewer system without a license issued to the property owner of record shall be considered an illegal storm drain connection.
  - (3) Whenever a property owner is cited for an illegal private storm drain connection to the city-owned separate storm sewer system, the property owner shall be given 90 days after the date of the citation to obtain a connection license. The city will issue a connection license to the property owner without penalty within the 90-day period provided, however, no nonstorm water is being discharged into the city-owned separate storm sewer system. After the 90-day period, the property owner shall be in violation of the provisions of Article 12 of this chapter.
  - (4) Whenever a property owner caused or is causing a discharge of storm water runoff associated with industrial activity or polluted industrial process water or other objectionable material into the city-owned separate storm sewer system, the property owner within 10 days after being notified by the city of such violation shall cease such discharges. If an NPDES permit is obtained by the property owner for such discharge, said discharge may be resumed.
- (e) Any other storm drain connections to the city-owned separate storm sewer system requires approval by the chief engineer in writing.
- (f) Private Storm Drain Connection Fee.
- (1) A license fee of \$200.00 shall be collected prior to the issuance of a private storm drain connection license. All license fees collected shall not be refundable.
  - (2) When the license is issued on behalf of the city, state or federal government, the chief engineer shall waive the collection of the license fee.
  - (3) All license fees shall be deposited into the highway fund.
- (Sec. 16-6.12, R.O. 1978 (1983 Ed.); Am. Ord. 92-122, 96-34, 03-12, 14-4)

**Sec. 14-12.13 Allocation of costs.**

- (a) Except as otherwise provided, the city may pay the entire cost for the following types of drainage facilities:
- (1) Public stream improvements;

- (2) Bridge to replace an existing bridge;
  - (3) Relief drains which will take care of the drainage requirements of the existing land use; provided, that if a property owner desires the construction of a larger facility to meet the drainage requirements attributable to a proposed higher land use of such person's property, the city may construct such larger facility provided that the property owner bears the additional cost of such enlarged facility; and
  - (4) Remedial work for the disposal of water collected or accumulated on public streets and/or remedial work necessitated by the disposal of such water over land not heretofore subject to such disposal.
- (b) Except as otherwise provided, the city may participate in remedial work to existing private drainage facilities, situated in or abutting on private properties, for the resolution of localized drainage problems to the extent of the cost of engineering and 50 percent of the cost of construction. Examples of such drainage facilities are:
- (1) Stream walls to minimize erosion or to prevent flooding where such walls will show some public benefit; and
  - (2) Drainage facilities to resolve seepage problem in the sidewalk area.
- (Sec. 16-6.13, R.O. 1978 (1983 Ed.))

**Sec. 14-12.14 Improvements under the improvement district assessment ordinance.**

Nothing contained in this article shall be deemed to affect the initiation and construction of drainage improvements under the improvement district assessment ordinance.  
(Sec. 16-6.14, R.O. 1978 (1983 Ed.))

**Sec. 14-12.15 Election by property owners to pay additional amounts.**

Notwithstanding any provision above mentioned as to apportionment of costs, owners of properties may pay more than the amounts required by such provisions relating to apportionment of costs.  
(Sec. 16-6.15, R.O. 1978 (1983 Ed.))

**Sec. 14-12.16 Land requirements and maintenance of drainage facilities.**

- (a) Except as otherwise provided, the city shall acquire the land or any interest in land necessary for the construction, maintenance and repair (and operation as the case may be) of drainage facilities which are to be constructed by the city by way of easements or in fee simple. Nothing herein shall prevent the city from acquiring easements for other improvements or for utilities or other uses through the same land.
  - (b) The city shall maintain and repair (and operate as the case may be) only structures in improved drainage facilities which have been constructed to city standards and have been accepted or constructed by the city.
  - (c) The cleaning of debris from public or private drainways may be performed as part of any general cleanup or beautification program of the city but shall not be performed as a part of maintenance and repair of drainage facilities; however, the chief engineer may cause to be removed any potential obstruction to the operation of any culvert, gate, bridge or drain opening, or similar drainage structure which has been accepted or constructed by the city.
- (Sec. 16-6.16, R.O. 1978 (1983 Ed.))

**Sec. 14-12.17 Exception.**

This article shall not apply to the construction of any drainage facility for subdivisions, the final subdivision map of which has been approved by the city planning department within 30 days of the approval date of this article, nor to any drainage improvement where participation by the city has been approved by the chief engineer prior to the approval date.  
(Sec. 16-6.17, R.O. 1978 (1983 Ed.))

**Sec. 14-12.18 Inequities.**

Whenever the chief engineer finds that the apportionment of costs, as proposed in this article, would result in inequities, the chief engineer is authorized and directed to submit his or her recommendations to the council as to how such inequities may be corrected.  
(Sec. 16-6.18, R.O. 1978 (1983 Ed.))

**Sec. 14-12.19 Provisions subject to state statutes.**

- (a) Any drainage facility, open drainway or other similar facility which extends to the shoreline may be subject to the provisions of HRS Chapter 205A, Part III.
  - (b) In such case, approval of the appropriate agency is required before approval of any construction plans may be granted by the chief engineer.
- (Sec. 16-6.19, R.O. 1978 (1983 Ed.); Am. Ord. 96-58)

**Sec. 14-12.20 Federal aid projects.**

- (a) The contents of this article may be adjusted, modified or deleted to meet federal requirements under a federal aid project.
  - (b) In the case of federal projects, the city may obtain the necessary channel right-of-way in such form as required by federal regulations.
- (Sec. 16-6.20, R.O. 1978 (1983 Ed.))

**Sec. 14-12.21 Approval denied.**

The chief engineer shall disapprove any drainage facilities, open drainways and other similar facilities which do not conform with the provisions of this article.

(Sec. 16-6.21, R.O. 1978 (1983 Ed.))

**Sec. 14-12.22 Discharge of effluent other than storm water runoff—Violation.**

- (a) No person shall discharge any effluent other than storm water runoff onto any public right-of-way and/or into any drainage facility without first obtaining a permit from the chief engineer. The chief engineer will only issue a permit upon application when the chief engineer determines that such discharge will not create a drainage or pollution problem or cause a violation of any provisions of the city NPDES permit. The chief engineer may condition the granting of the permit with requirements to prevent drainage and/or pollution problems or mitigative measures which will meet any conditions of the city NPDES permit. Except for those nonstorm water discharges authorized by the city NPDES permit, no discharge shall commence unless an NPDES permit is first obtained from the department of health, State of Hawaii, for the discharge of any pollutant into state waters through the municipal separate storm sewer system.
  - (b) Any person desiring the permit required under this section shall apply to the chief engineer on form(s) prescribed by the chief engineer.
  - (c) Any permit issued under this section shall be for the duration of the effluent discharge but shall not extend beyond the term of the city's NPDES permit. The permit shall meet any conditions of the city's NPDES permit.
  - (d) A fee of \$200.00 shall be required for each permit application. All application fees collected shall not be refundable. When the discharge is performed by or on behalf of the city, state or federal government, the collection of the permit fee shall be waived. All permit fees shall be deposited into the highway fund.
  - (e) Any discharge which violates any condition of the permit or the state water quality standards in Chapter 11-54, Hawaii Administrative Rules (HAR), shall also be a violation of Article 12 of this chapter and may result in a cease and desist order. In addition, the city by written notice may terminate the permit for any discharge which violates any condition of the permit or the state water quality standards in Chapter 11-54, HAR.
  - (f) Failure to obtain a permit required under this section shall be a violation of Article 12.
- (Sec. 16-6.22, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 92-122, 96-34, 03-12, 14-4)

**Sec. 14-12.23 Environmental quality control—Violation.**

- (a) It shall be unlawful for any person to discharge or cause to be discharged any pollutant into any drainage facility which causes a pollution problem in state waters, or causes a violation of any provision of the city NPDES permit or the water quality standards of the State of Hawaii.
- (b) It shall be unlawful for any person to discharge or cause to be discharged any storm water runoff associated with industrial activity into any drainage facility which causes a violation of any provision of the city NPDES permit.

(c) It shall be unlawful to discharge domestic wastewater and industrial wastewater into any drainage facility or any separate storm sewer system.

It also shall be unlawful to discharge commercial cooking oil waste and commercial FOG waste, as defined under Section 14-5A.1, into any drainage facility or any separate storm sewer system.

(d) It shall be unlawful to discharge any storm water on any public right-of-way which creates a drainage problem or causes a nuisance.

(e) The provisions of this section are not applicable to employees of the city who, during the performance of their duties or in cases of emergency or a hazardous substance spill, may discharge sewage, other pollutants or wash water from cleanup operation of a hazardous substance spill into any drainage facility.

(f) Upon presentation of proper credentials, the chief engineer or the chief engineer's duly authorized representatives may enter at reasonable times any building or premises in the City and County of Honolulu in the discharge of the chief engineer's official duties, to inspect or investigate the discharge of any pollutant or effluent into or onto a drainage facility; provided, that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession; and provided further, that an order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted.

(Sec. 16-6.23, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 92-122, 96-34, 02-14)

#### Sec. 14-12.24 Administrative enforcement.

If the chief engineer determines that any person is violating any provision of Article 12 of this chapter, any rule adopted thereunder, or any permit or license issued pursuant thereto, the chief engineer may have the person served, by mail or delivery, with a notice of violation and order. Whenever a corporation violates any of the provisions of Article 12 of this chapter, the violation shall be deemed to be also that of the individual directors, officers or agents of such corporation who, in their capacity as directors, officers or agents of such corporation, have authorized, ordered or done any of the acts constituting in whole or in part such violation.

(a) Contents of the Notice of Violation. The notice shall include at least the following information:

- (1) Date of the notice;
- (2) The name and address of the person served with the notice and the location of the violation;
- (3) The section number of the ordinance or rule, or other law which has been violated;
- (4) The nature of the violation(s); and
- (5) The deadline for compliance with the notice.

(b) Contents of the Order. The order may require the person to do any or all of the following:

- (1) Cease and desist from the violation;
- (2) Correct the violation at the person's own expense before a date specified in the order;
- (3) Payment of an administrative fine; or
- (4) Appear before the chief engineer or a person designated by the chief engineer at a time and place

specified in the order and answer the charges specified in the notice of violation.

(Added by Ord. 92-122)

#### Sec. 14-12.25 Judicial enforcement of order.

The chief engineer may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued. Where the civil action has been instituted to enforce the civil fine imposed by said order, the chief engineer need only show that the notice of violation and order was served, a hearing was held or the time granted for requesting a hearing had expired without such a request, the civil fine imposed, and that the fine imposed had not been paid. (Added by Ord. 92-122)

#### Sec. 14-12.26 Enforcement.

(a) Show Cause Order. Whenever the chief engineer finds that a discharge of storm water or effluent or any pollutant is taking place or threatening to take place in violation of any requirement imposed by ordinance, regulation or other law, the chief engineer may issue a notice of violation and show cause order requesting the property owner or permit holder or discharger to meet with someone designated by the chief engineer to show why there should be no formal enforcement action. This meeting is not a prerequisite to taking formal enforcement action against the property owner or permit holder or discharger, and neither does this preclude in any way informal meetings of discussions with the property owner or permit holder or discharger.

(b) Cease and Desist Order. Whenever the chief engineer finds that a discharge of storm water or effluent or any pollutant is taking place or threatening to take place in violation of any ordinance, order, regulation or other law, the chief engineer may issue an order directing the property owner or permit holder or discharger to cease and desist such discharges and directing the property owner or permit holder or discharger to achieve compliance in accordance with a detailed time schedule of specific actions the property owner or permit holder or discharger

must take in order to correct or prevent violations of this ordinance, regulation, order or any other law. The chief engineer may order the revocation or suspension of any permit or license. Any order issued by the chief engineer may require the property owner or permit holder or discharger to provide information as the chief engineer deems necessary to explain the nature of the discharge. The chief engineer may require in any cease and desist order that the property owner or permit holder or discharger pay to the city the costs of any extraordinary inspection or monitoring which in the discretion of the chief engineer was necessary as a result of the violation together with civil penalties.

(c) Cleanup and Abatement Orders.

(1) Any person who is in violation of this ordinance, regulation, order or any other law, shall upon the chief engineer's order and at the total expense of the property owner or permit holder or discharger clean up the discharge and do whatever is necessary or required by the chief engineer to abate the effects of the violation.

(2) The chief engineer may initiate any cleanup, abatement or remedial work required that the chief engineer deems necessary as a result of the magnitude of the violation or when necessary to prevent harm to public health or the environment. The chief engineer may take this action, notwithstanding that injunctive relief and this action may be in addition to any action taken by the property owner or permit holder or discharger or other persons.

(3) Any property owner or permit holder or discharger violating the ordinance, regulations, order or any other law shall be liable to the city for costs incurred in the cleanup, abatement or remedial actions undertaken by the chief engineer, including but not limited to administrative costs, inspection costs, attorney's fees and penalties or other liability imposed upon the city by other agencies, persons or organizations whether by way of court action, administrative action or settlement.

(d) Termination of Discharge. In addition to other remedies available and as provided in Article 12 of this chapter or by law, when in the discretion of the chief engineer the property owner or permit holder or discharger has not or cannot demonstrate satisfactory progress toward compliance with the requirements of this ordinance, regulation, order or other laws, the chief engineer, after providing written notice to the property owner or permit holder or discharger by certified mail 30 days in advance of any action, may sever or plug the connection from the property owner's or permit holder's or discharger's system to the city-owned separate storm sewer system or otherwise prevent the discharge of storm water or effluent or any pollutant from the property owner's or permit holder's or discharger's system to the city-owned separate storm sewer system.

(e) Administration Fines. In addition to other remedies available and as provided in Article 12 of this chapter or by law, the chief engineer may impose administrative penalties.

(Added by Ord. 92-122)

Sec. 14-12.27 Appeals.

(a) The property owner, permit holder or discharger may petition to appeal the terms of a permit or license issued herein by the city, its modification, revocation, suspension, or denial, or the chief engineer's order, including but not limited to enforcement within 30 days of the chief engineer's final action on the matter in accordance with the rules and regulations of the department.

(b) Failure to submit a timely petition for appeal shall be deemed to be a waiver of the administrative appeal.

(c) In its petition, the appealing party must indicate the permit or license provisions objected to, the reasons for this objection, and alternative condition, if any, it seeks to place in the permit or license, or the specific basis for its objections to the permit or license modification, suspension, revocation or denial and alternatives, if any, it suggests; its specific grounds for its objection to the chief engineer's order.

(d) The effectiveness of the permit or license issued herein or the chief engineer's final action regarding the permit or license modification, suspension, revocation or denial; or regarding the chief engineer's order, including but not limited to enforcement, shall not be stayed pending the appeal.

- (e) If the petition for appeal is not acted upon within 30 days by the chief engineer, the petition shall be deemed to be denied and the property owner or permit holder or discharger shall comply with the terms of the permit, license or the chief engineer's final action regarding the permit or license modification, suspension or revocation; or the terms of the chief engineer's order.
- (f) The chief engineer shall take final action on a permit or license denial, issuance, modification, or renewal, or the order, including but not limited to enforcement, by sending the permit, license or the chief engineer's order to the applicant by certified mail.

(Added by Ord. 92-122)

**Sec. 14-12.28 Violation provisions.**

- (a) Administrative and Civil Penalties. Any person violating any provisions of Article 12 of this chapter, any order, permit or license issued hereunder, or any other standard or requirement shall be liable for an administrative or civil penalty of not less than \$1,000.00 nor more than \$25,000.00 per violation per day, except that in cases where such offense shall continue after due notice, each day's continuance of the same shall constitute a separate offense. In determining the amount of the fine, the chief engineer shall consider the seriousness of the violation or violations, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the fine on the violator, and such other considerations that have a bearing on the amount of the fine. In addition to the penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this ordinance or the orders, rules, regulations, permits and licenses hereunder.
- (b) Criminal Penalties. Any person:
  - (1) Who willfully, intentionally, recklessly or negligently violates any provision of Article 12 of this chapter, order, permit or license issued hereunder, or any other requirement, shall upon conviction be punished by a fine not less than \$1,000.00 nor more than \$25,000.00 or by imprisonment not exceeding 90 days, or both, except that in cases where such offense shall continue after due notice, each day's continuance of the same shall constitute a separate offense; or
  - (2) Who knowingly makes any false statement or misrepresentation in any record, report plan, or other document filed with the chief engineer, or tampers with or knowingly renders inaccurate any monitoring device or sampling and analysis method required under Article 12 of this chapter or by other law, shall be punished by a fine of not more than \$25,000.00 or by imprisonment for not more than six months, or both.

Unless otherwise provided, this section shall be controlled by the provisions of HRS, Hawaii Penal

Code.

(Added by Ord. 92-122)

**Sec. 14-12.29 Injunctive relief.**

Whenever a property owner or permit holder or discharger has violated a requirement or continues to violate the provisions of Article 12 of this chapter, permits, licenses or orders issued hereunder, the city may petition the Circuit Court of the First Circuit, State of Hawaii, or the United States District Court, State of Hawaii, through the city's attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the permit, license or order, or other requirement imposed by this article on activities of the property owner or permit holder or discharger. Such other action as appropriate for legal and/or equitable relief may also be sought by the city. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against a property owner or permit holder or discharger. (Added by Ord. 92-122)

**Sec. 14-12.30 Nonliability of department personnel.**

Notwithstanding any other law to the contrary, no member, employee, or officer of the department of public works shall be civilly or criminally liable or responsible under this ordinance for any acts done by the member, officer, or employee in their performance of the member's officer's, or employee's duties. (Added by Ord. 92-122)

**Sec. 14-12.31 Rule-making powers.**

The chief engineer shall be empowered to promulgate rules and regulations pursuant to HRS Chapter 91, for the implementation of the provisions of Article 12 of this chapter. (Added by Ord. 92-122)

**Sec. 14-12.32 Decisions of the chief engineer.**

Decisions of the chief engineer made in accordance with the provisions of this article, and/or decisions involving variations from the standards referred to herein shall be made a matter of record in the permit or license file. (Added by Ord. 92-122)

### **Article 13. General Provisions for Grading, Soil Erosion and Sediment Control**

**Sections:**

- 14-13.1 Purposes.**
- 14-13.2 Scope.**
- 14-13.3 Definitions.**
- 14-13.4 Hazardous conditions—Stop work order.**
- 14-13.5 Exclusions.**
- 14-13.6 Erosion and sediment control plans.**

**Sec. 14-13.1 Purposes.**

The purposes of Articles 13 through 16 of this chapter are to provide standards to protect property and to promote the public health, safety, and welfare by regulating and controlling grading, grubbing, stockpiling, soil erosion, sedimentation, and land disturbing development within the city. The public health, safety, and welfare require that environmental considerations contribute to the determination of these standards insofar as they relate to protecting against erosion and pollution. (Sec. 23-1.1, R.O. 1978 (1983 Ed.); Am. Ord. 17-28)

**Sec. 14-13.2 Scope.**

Articles 13 through 16 of this chapter set forth the rules and regulations for the control of land disturbing development activities, grading, grubbing, stockpiling, soil erosion and sedimentation; establish the administrative procedure and minimum requirements for issuance of permits; and provide for the enforcement of such rules and regulations. (Sec. 23-1.2, R.O. 1978 (1983 Ed.); Am. Ord. 17-28)

**Sec. 14-13.3 Definitions.**

Wherever used in Articles 13 through 16 of this chapter, the following words shall have the meaning indicated:

“Best management practices” or “BMPs” means structural devices or nonstructural practices employed at construction sites that are designed to contain storm water on-site and prevent the discharge of pollutants from entering any drainage facility or any state waters or to redirect storm runoff flow. BMPs may include a schedule of activities, the prohibition of practices, maintenance procedures and other management practices to accomplish the same.

“Chief engineer” means the director and chief engineer, department of public works, City and County of Honolulu, or such person’s duly authorized representative.

“Conservation program” means a document submitted by a land user containing information for the conservation of soil, water, vegetation and other applicable natural resources for an area of land currently being implemented and maintained.

“Director” means the director of planning and permitting of the city or the director's duly authorized representative.

“Earth material” means any rock, coral, sand, gravel, soil or fill and/or any combination thereof.

“Engineer” means a person duly registered as a professional engineer in the State of Hawaii.

“Engineer’s soils report” means a report on soils conditions prepared by an engineer qualified in the practice of soils mechanics and foundations engineering.

“Engineering slope hazard report” means a report that utilizes the application of engineering and geologic knowledge and principles in the investigation, evaluation and mitigation of hazards posed by potential rock, soil or other slope movement.

“Erosion” means wearing away of the ground surface as a result of action by wind and/or water.

“Excavation” or “cut” means any act by which earth material is cut into, dug or moved, and shall include the conditions resulting therefrom.

“Fill” means any act by which earth materials are placed or deposited by artificial means, and shall include the resulting deposit of earth material.

“Grading” means any excavation or fill or any combination thereof.

“Grubbing” means any act by which vegetation, including tree, timber, shrubbery and plant, is dislodged or uprooted from the surface of the ground.

“Maximum extent practicable” or “MEP” means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods or other alternatives.

“National Pollutant Discharge Elimination System permit” or “NPDES permit” means the permit issued to a permittee pursuant to Title 40, Code of Federal Regulations, Part 122, Subpart B, Section 122.26(a)(1)(ii), for construction activity including clearing, grading and excavation activities; or a permit issued to a permittee pursuant to Hawaii Administrative Rules, Chapter 11-55, “Water Pollution Control” for construction dewatering activity; or a permit issued to the city pursuant to Title 40, Code of Federal Regulations, Part 122, Subpart B, Section 122.26(a)(1)(iii), for storm water discharges from the city’s separate storm sewer systems.

“Permittee” means the person or party to whom the permit is issued and shall be the owner or developer of the property whether it is a person, firm, corporation, partnership or other legal entity responsible for the work.

“Soil and water conservation districts” means the legal subdivisions of the State of Hawaii authorized under HRS Chapter 180.

“State waters” means the same as that term is defined in HRS Section 342D-1.

“Stockpiling” means the temporary open storage of earth materials in excess of 100 cubic yards upon any premises except the premises upon which a grading permit has been issued for the purpose of using the material as fill material at some other premises at a future time.

“Surveyor” means a person duly registered as a professional land surveyor in the State of Hawaii.

“Wetland” means the same as that term is defined in Chapter 25.

(Sec. 23-1.3, R.O. 1978 (1983 Ed.); Am. Ord. 92-122, 96-34, 04-27, 17-28)

#### **Sec. 14-13.4 Hazardous conditions—Stop work order.**

- (a) Whenever the chief engineer determines that any existing grading, grubbing or stockpiling is or will become a hazard to life and limb, endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of the property, upon receipt of notice in writing from the chief engineer shall abate the hazard and shall conform with the requirements of Articles 13 through 16 of this chapter. When there are reasonable grounds to believe that hazardous conditions may exist, the chief engineer or an authorized representative may obtain a warrant and shall enter upon the property to investigate or to enforce the provisions stated of this section, or both.
- (b) If the chief engineer determines that work must stop due to hazardous conditions, the chief engineer shall issue a stop work order to the owner of the property and shall concurrently notify and transmit a copy of the order to the chief of police who shall have the power to enforce the stop work order pursuant to Section 6-1604, Revised Charter of Honolulu, 1973, as amended.

(Sec. 23-1.4, R.O. 1978 (1983 Ed.); Am. Ord. 91-07)

#### **Sec. 14-13.5 Exclusions.**

This chapter shall not apply to the following:

- (a) Mining or quarrying operations regulated by other city ordinances;
- (b) Excavation and backfill for the construction of basements and footings of a building, retaining wall or other structure authorized by a valid building permit. This shall not exempt any fill made outside the building lines or the placing of fill material obtained from said excavations on other premises;

- (c) Grading and grubbing individual cemetery plots;
  - (d) Land which is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district directors, and that a comprehensive conservation program is being actively pursued for the entire area in the program and that the conservation program with appropriate modification is reviewed and accepted by the soil and water conservation district directors periodically but not less than once every five years and shall be made available to the city and county; provided, however, that no grading which, in the opinion of the chief engineer, endangers abutting properties or which alters the general drainage pattern with respect to abutting properties shall be commenced or performed without a grading permit;
  - (e) Excavation which does not alter the general drainage pattern with respect to abutting properties, which does not exceed 50 cubic yards of material on any one site, and does not exceed three feet in vertical height at its deepest point; provided, that the cut meets the cut slopes and the distance from property lines requirements in Section 14-15.1;
  - (f) Fill which does not alter the general drainage pattern with respect to abutting properties, which does not exceed 50 cubic yards of material on any one site and does not exceed three feet in vertical depth at its deepest point; provided, that the fill meets the fill slopes and distance from property lines requirements in Section 14-15.1;
  - (g) Grubbing which does not alter the general drainage pattern with respect to abutting properties and does not exceed a total area of 15,000 square feet;
  - (h) Exploratory excavations not to exceed 50 cubic yards under the direction of an engineer for the purpose of subsurface investigation; provided, that these excavations will be filled in if required by the chief engineer and provided that the chief engineer has been advised in writing prior to the start of such excavations.
- (Sec. 23-1.5, R.O. 1978 (1983 Ed.))

**Sec. 14-13.6 Erosion and sediment control plans.**

- (a) Notwithstanding any other law to the contrary, it is unlawful for any person to perform, participate in, or allow any development or land disturbing activity that requires a building permit, grading permit, stockpiling permit, or trenching permit without an erosion and sediment control plan that is approved the director.
- (b) All development and land disturbing activities that require a building permit, grading permit, stockpiling permit, or trenching permit must be performed in compliance with erosion and sediment control plan approved by the director. All project sites subject to an erosion and sediment control plan must be maintained in compliance with the erosion and sediment control plan approved by the director.
- (c) Erosion and sediment control plans approved by the director must effectively prohibit the discharge of pollutants from construction sites and land disturbing activities to the municipal separate storm sewer system and state waters to the maximum extent practicable. The director may condition the approval of an erosion and sediment control plan on the implementation and maintenance of any best management practices that are intended or designed to address erosion control, run-on control, run-off control, sediment control, pollution control, post-construction pollutant control, low impact development standard or objectives, and water quality.
- (d) Prior to accepting an erosion and sediment control plan for review, the director must collect an erosion and sediment plan review fee of \$250.00. If the director requires revisions or alterations to a proposed erosion and sediment control plan, a separate plan review fee of \$100.00 must be collected prior to review of the revised or amended erosion and sediment control plan. If development or land disturbing activities are commenced prior to approval of the related erosion and sediment control plan, the director must collect a double plan review fee for each erosion and sediment control plan reviewed by the department. All fees for erosion and sediment control plan review are to be deposited into the general fund.
- (e) The director may adopt and enforce administrative rules to implement the requirements of this section.
- (f) Compliance with this section will not relieve a person of responsibility for complying with any other law, including but not limited to ordinances and statutes that prohibit the discharge of pollutants to the municipal separate storm sewer system.

(Added by Ord. 17-28)

## Article 14. Permits, Bonds and Inspection for Grading, Soil Erosion and Sediment Control

### Sections:

- 14-14.1 Permit.**
- 14-14.1A Application for permit.**
- 14-14.2 Application for a grading permit.**
- 14-14.2A Application for a grubbing permit.**
- 14-14.2B Application for a stockpiling permit.**
- 14-14.3 Grading permit limitations.**
- 14-14.4 Permit fees.**
- 14-14.4A Grading without a permit.**
- 14-14.5 Expiration of permit.**
- 14-14.6 Denial of permit.**
- 14-14.7 Suspension or revocation of permit.**
- 14-14.8 Bond.**
- 14-14.9 Inspection.**

### Sec. 14-14.1 Permit.

Except as excluded in Section 14-13.5 of this chapter:

- (a) No person shall commence or perform any grading without a grading permit;
  - (b) No person shall commence or perform any grubbing without a grubbing permit except where grubbing concerns land for which a grading permit has been issued; and
  - (c) No person shall commence or perform any stockpiling without a stockpiling permit.
- (Sec. 23-2.1, R.O. 1978 (1983 Ed.))

### Sec. 14-14.1A Application for permit.

- (a) Prior to commencing or performing any grading, grubbing or stockpiling, a person shall file an application for a permit with the chief engineer on form(s) prescribed by the chief engineer.
- (b) The chief engineer may adopt rules pursuant to HRS Chapter 91 for expediting processing of a permit application.

(Added by Ord. 96-34)

### Sec. 14-14.2 Application for a grading permit.

- (a) An applicant for a grading permit shall file a written application which shall:
  - (1) Describe, by tax map key number or street address, the land on which the proposed work is to be done;
  - (2) State the estimated dates for the starting and completion of the proposed work;
  - (3) Show the names and addresses of the owner or owners of the property;
  - (4) Show the names of the permittee, the person who shall be responsible for the work to be performed and that person's contractors and/or employees, and any person responsible for requesting the inspection required herein. A person signing the application for the permittee shall present evidence that the person is authorized to act for the permittee;
  - (5) Include a vicinity sketch map or plan adequately indicating the site location; property lines, easements and setbacks of the property on which the work is to be performed; location of any buildings, structures and improvements on the property where the work is to be performed and location of any building or structure on adjacent property which is within 15 feet of the property to be graded when the grading may affect the building or structure; elevations, dimensions, location, extent and the slopes of all proposed grading shown by contours and/or other means; the area in square feet of the land to be graded; the quantities of excavation and fill involved; and the locations of any streams, waterways and wetlands;
  - (6) State the current development plan land use map designation and zoning designation of any property that will be subject to the permit;
  - (7) Include a copy of any environmental impact statement or environmental assessment required by the United States or by any state or city agency;
  - (8) State the purpose of the grading work in terms of a use or structure permitted on the zoning lot under Chapter 21;

- (9) If the use or structure for which the grading work is being done requires a conditional use permit, plan review use resolution, planned development approval, site plan review permit, special district permit, special management area use permit or special management area minor permit, the applicant shall include a copy of the applicable permits, approvals and resolutions; and
- (10) If the use or structure for which the grading work is being done requires an amendment to any permit, resolution or approval referred to in subdivision (9), the applicant shall include a copy of the amendment.
- (b) In the event the area of the zoning lot or portion thereof subject to the permit is 15,000 square feet or more for single-family or two-family dwelling uses or 7,500 square feet or more for other uses, or in the event the total area to be developed is more than 15,000 square feet for single-family or two-family dwelling uses or 7,500 square feet for other uses and grading is being done in increments of less than that square footage, the applicant shall:
- (1) Include a contour map, prepared by a surveyor or an engineer, which shall show the location and type of existing trees with a trunk diameter larger than 12 inches, prominent visible rock outcroppings, utility lines, structures, dimensions and azimuths of property lines, easements and setbacks, and the name and location of streets, roadways and rights-of-way; and
  - (2) Include a grading plan and specifications prepared by an engineer, which plan shall show the contours of the land before grading and the finished conditions to be achieved by the proposed grading, to be shown by contours, cross sections, spot elevations or other means. The grading plan shall provide information regarding the location and source of imported fill material and the location where excess excavation material is to be disposed of when the application is made. The borrow and/or disposal site(s) must also fulfill the requirements of Articles 13 to 16. Where the area is proposed to be graded in increments, the grading plan shall also include the plan for the future development of the area and the proposed grading work for the future increments. The chief engineer may also require submittal of a plan showing the location of proposed structures, buildings, streets, utilities, easements, permanent engineering measures to control soil erosion and storm runoff, and other improvements where the grading work is to be performed. One of the purposes of the grading plan is to show that only the minimum grading necessary to develop the area in conformity with zoning will be performed, and hence the natural contours and topography will be retained wherever feasible, and exposed or finished cuts or fills will be rounded off in a natural manner and sharp angles will be avoided. The grading plan shall provide that exposed finished soil surfaces shall be covered with vegetation or matting immediately to control soil erosion.
- (c) (1) In the event the total area including any areas developed incrementally that is to be graded is 15,000 square feet or more for single-family or two-family dwelling uses or 7,500 square feet or more for other uses, or in the event a proposed cut or fill is greater than 15 feet in height for single-family or two-family dwelling uses or 7.5 feet in height for other uses, in addition to the foregoing, a drainage and erosion control plan shall be included in the application. The objective of the drainage and erosion control plan is to employ best management practices to the maximum extent practicable at the construction site. BMPs shall be specified on all erosion control plans.
- The drainage and erosion control plan shall:
- (A) Be prepared by an engineer in accordance with the soil erosion standards and guidelines approved by the chief engineer, a copy of which shall be on file in the division of engineering, department of public works, City and County of Honolulu, which is incorporated herein by reference and made a part of this article;
  - (B) Show the general scheme for controlling soil erosion and disposal of storm water runoff including, but not limited to, structural best management practices (BMPs) such as terraces, berms, ditches, culverts, subsurface drains, dams, sediment traps, dikes, detention/retention ponds, and nonstructural BMPs such as seeding and planting, mulching, sprigging, sodding, or temporary covering; and
  - (C) Show the acreage of the areas served by each drain and drainage structure.
- (2) The permittee shall submit temporary erosion control plans and procedures for the chief engineer's approval prior to grading, which shall include a statement of the schedules and sequence of construction operations. The limits of the area to be graded shall be delineated by flagging before the commencement of the grading work. Where construction equipment will make frequent crossings of a natural drainage course, plans shall provide for temporary culverts or bridge structures to be installed. Where any operations are delayed for any reason, a revised schedule shall be submitted to the chief engineer together with such modifications of



the temporary drainage and erosion control plan as the chief engineer may require. Plans shall provide that the area of bare soil exposed at any one time by construction operations shall be held to a minimum. No drainage structure shall discharge onto a fill slope in such a manner as to cause erosion or gully. Temporary erosion controls shall not be removed before permanent erosion controls are in place and established;

- (3) The permittee and the permittee's contractor shall be responsible for construction, installation and maintenance of structural and nonstructural BMPs at construction sites in accordance with the approved drainage and erosion control plan. The adequacy of any BMPs employed or any corrective action that needs to be taken at the construction site is the responsibility of the permittee, the permittee's engineer, and the permittee's contractor, and the cost of any corrective action or work shall be borne by the permittee;
  - (4) In addition to temporary erosion control plan(s) for construction activities, the chief engineer may require the permittee to prepare and submit permanent erosion control BMPs for the control of storm runoff pollutants and erosion after construction has been completed.
- (d) (1) In the event that a proposed cut or fill is greater than 15 feet in height for single-family or two-family dwelling uses or 7.5 feet in height for other uses; the proposed grading is on land with slopes exceeding 15 percent; any fill is to be placed over a gully, or a swamp, pond, lake, waterway or wetland; the fill material will be a highly plastic clay; or the fill is to be used to support foundations for residential or other buildings, an engineer's soils report shall be submitted. The soils report shall include data regarding the nature, distribution and engineering characteristics of existing soils, the surface and subsurface conditions at the site or the presence of groundwater when detected, and shall recommend the limits for the proposed grading, the fill material to be used and the manner of placing it, including the height and slopes of cut and fill sections.
- (2) If the proposed grading includes modification to an existing slope with a cut greater than 15 feet in height and a grade steeper than 40 percent, an evaluation of slope hazards is required and the findings of the evaluation shall be included in a report. The slope hazard evaluation shall, at a minimum, include an evaluation of hazards posed by potential rock, soil or other slope movement to the proposed development, and an evaluation of the hazard posed to adjacent existing properties or buildings by the proposed grading. The engineering slope hazard report and construction plans shall include mitigative measures to minimize the hazards posed by potential rock, soil and other slope movement as well as the threat the development poses to properties adjacent to the proposed grading.

(Sec. 23-2.2, R.O. 1978 (1983 Ed.); Am. Ord. 91-08, 96-34, 04-27)

**Sec. 14-14.2A Application for a grubbing permit.**

- (a) An applicant for a grubbing permit shall file a written application, which shall:
- (1) Describe, by tax map key number or street address, the land on which the proposed work is to be done;
  - (2) State the estimated dates for starting and completion of the proposed work;
  - (3) Show the name and addresses of the owner or owners of the property;
  - (4) Show the names of the permittee, and the person who shall be responsible for the work to be performed and of that person's contractors and/or employees and of any person responsible for requesting the inspections required herein. A person signing the application for the permittee shall present evidence that the person is authorized to act for the permittee; and
  - (5) Contain a statement of the purpose for which the grubbing is required; a plot plan showing the location and property boundaries, easements and setbacks; a soil erosion and sediment control plan; and other pertinent information as may be required by the chief engineer.
- (b) Grubbing of land for the purpose of making topographic surveys shall not be permitted. This does not prohibit the cutting of trails for survey lines and access for soil exploration equipment.

(Added by Ord. 96-34)

**Sec. 14-14.2B Application for a stockpiling permit.**

- (a) An applicant for a stockpiling permit shall file a written application, which shall:
- (1) Describe, by tax map key number or street address, the land on which the proposed work is to be done;
  - (2) State the estimated dates for the starting and completion of the proposed work;
  - (3) Show the names and addresses of the owner or owners of the property;

- (4) Show the names of the permittee, and the person who shall be responsible for the work to be performed and of that person's contractors and/or employees and of any person responsible for requesting the inspection required herein. A person signing the application for the permittee shall present evidence that the person is authorized to act for the permittee; and
  - (5) Furnish a plot plan showing the property lines, easements and setbacks, topography, and the location of the proposed stockpile, quantities, height of stockpile, life of stockpile and source of the material to be stockpiled and furnish any other information as may be required by the chief engineer to control the emission of air-borne dust, drainage runoff or erosion problems. The plot plan for stockpiling shall be approved by the chief engineer.
  - (b) Where stockpiling is for the purpose of surcharging to stabilize or consolidate an area, the chief engineer shall require the permittee to submit an engineer's soils report which shall include data on the effect such surcharging will have on adjacent buildings or structures.
  - (c) Where stockpiling is to occur on lands within the AG-1 Restricted Agricultural or AG-2 General Agricultural zoning districts, the stockpiling and the materials generated, used, or stored on the land must comply with all other requirements established by federal, state, or city law, ordinance, or regulation, and any applicable permits issued thereunder.
- (Added by Ord. 96-34; Am. Ord. 14-34)

**Sec. 14-14.3 Grading permit limitations.**

- (a) In the event the plan for the development of the area to be graded or the stated purpose of the grading work requires a conditional use permit, special district permit, planned development approval, a site plan review permit, a plan review use approval or a rezoning under Chapter 21, or requires a special management area use or special management area minor permit under Chapter 25, approval of any such permit or rezoning for the development, or any necessary amendment to any such approval, permit, or rezoning, shall be obtained prior to approval of the grading permit application, and the grading permit application shall conform to the conditions of the approval, the approved permit or the rezoning.
- (b) In the event the plan for the development of the area to be graded is to be subdivided, tentative approval of the subdivision pursuant to the subdivision rules and regulations shall be obtained prior to the approval of the grading permit application.
- (c) In the event the area to be graded requires an NPDES permit, approval of the NPDES permit may be obtained after the approval of the grading application; however, the grading application, including any drainage and erosion control plans, shall conform to the conditions of the approved NPDES permit. In case of conflicting requirements, the most restrictive shall apply.
- (d) In the event the grading work involves contaminated soil, then all grading work shall be done in conformance with applicable state and federal requirements.
- (e) The chief engineer may attach such conditions as may be reasonably necessary to ensure that any grading work is for a use or structure permitted in the zoning district and to prevent creation of a nuisance or hazard to public or private property, health or welfare. Such conditions may include, but shall not be limited to:
  - (1) Improvement of any existing grading to bring it up to the standards under Articles 13 through 16 of this chapter;
  - (2) Requirements for fencing of excavation or fills which otherwise would be hazardous;
  - (3) The requirement of retaining walls adequate to prevent loss of support to, erosion of and interference with natural drainage patterns on adjacent properties;
  - (4) Cleaning up the area;
  - (5) Limitations on the days and hours of operation; and
  - (6) Increasing the effectiveness of the erosion control plan as required.
- (f) The issuance of a grading permit shall constitute an authorization to do only that work which is described on the permit and in the plans and specifications approved by the chief engineer.
- (g) Permits issued under the requirements of Articles 13 through 16 of this chapter shall not relieve the permittee of responsibility for securing required permits or approvals for work to be done which is regulated by any other federal, state and city codes or regulations, department or division of the governing agency.

(Sec. 23-2.3, R.O. 1978 (1983 Ed.); Am. Ord. 91-08, 92-122, 96-34)

**Sec. 14-14.4 Permit fees.**

- (a) Prior to issuance of a grading permit, a permit fee for grading on the same site based on the volume of excavation or fill measured in place, whichever is greater, will be collected according to the following schedule:

<b>Volume of Material</b>	<b>Permit Fee</b>
1,000 cubic yards or less	\$505.00 plus \$55.00 for each 100 cubic yards or fraction thereof
More than 1,000 to less than 10,000 cubic yards	\$1,000.00 for the first 1,000 cubic yards plus \$55.00 for each additional 1,000 cubic yards or fraction thereof
10,000 cubic yards or more	\$1,480.00 for the first 10,000 cubic yards plus \$35.00 for each additional 1,000 cubic yards or fraction thereof

The fee for a permit authorizing work additional to that under a valid permit will equal the difference between the fee paid for the original permit and the fee computed for the entire project.

- (b) Prior to issuance of a grubbing permit, a permit fee of \$110.00 for grubbing areas up to 15,000 square feet plus \$15.00 for each additional 1,000 square feet or fraction thereof will be collected.
- (c) Prior to issuance of a stockpiling permit, a permit fee of \$55.00 for stockpiling in excess of the first 100 cubic yards plus \$15.00 for each additional 1,000 cubic yards or fraction thereof will be collected.
- (d) When grading, grubbing or stockpiling is performed by or on behalf of the city, state or federal government, the chief engineer shall waive the collection of any permit fee required in subsections (a), (b) and (c) of this section.
- (e) When a business is certified as a qualified business pursuant to Section 35-1.3, the chief engineer shall waive the collection of any permit fee required in subsections (a), (b) and (c) of this section for the qualified business for a period of three years.
- (f) All permit fees are to be deposited into the highway fund.
- (g) When grading, grubbing or stockpiling permits are processed in conjunction with a building permit for the creation of an "accessory dwelling unit," as defined in Section 21-10.1, the chief engineer shall waive the collection of the permit fees required in subsections (a), (b) and (c) of this section. The grading, grubbing and stockpiling permit fees that were collected for the creation of "accessory dwelling units" from the effective date of Ordinance 15-41 (September 14, 2015), will be reimbursed if requested by the permittee.\* (Sec. 23-2.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-34, 98-54, 03-12, 14-4, 16-19, 17-28)

**Sec. 14-14.4A Grading without a permit.**

- (a) Where work for which a grading permit is required by Articles 13 through 16 of this chapter has been commenced or has been accomplished without a permit, a permit shall be obtained, and double the fees specified in Section 14-14.4 shall be assessed, provided that such work complies with or may be made to comply with the provisions of Articles 13 through 16 of this chapter.
- (1) If the grading work accomplished or commenced cannot be made to comply with the provisions of Articles 13 through 16 of this chapter, the owner and developer of the property or person or persons responsible for the initiation or accomplishment of such grading work shall restore the land to its original condition and shall obtain a certificate of completion therefor from the director.
  - (2) Any filling performed without a permit will not be deemed a structural fill.
  - (3) Any owner and developer of the property or person or persons responsible for the initiation or accomplishment of grading work in violation of Section 14-14.1 may, at the discretion of the director, not be issued a grading permit, and the director may issue an order requiring the owner and developer of the property or person or persons responsible for the initiation or accomplishment of the grading work to restore the land to its original condition. This prohibition and requirement applies whether or not such person is able to make the grading compliant with the provisions of Articles 13 through 16 of this chapter.
  - (4) Exception – At the discretion of the director, the owner and developer of the property or person or persons responsible for such grading shall be deemed to have not violated the provisions of Article 13 through 16 of this chapter by grading without a permit in cases of natural or man-made disasters.

**\*Editor's Note:** Section 14-14.4(g) will be repealed on June 30, 2020, in accordance with Ord. 17-30.

For the purposes of this section, a “natural disaster” includes disasters caused by fire, flood, tidal waves, hurricanes, tsunamis, volcanic eruptions, earthquakes, or other natural causes; and a “man-made disaster” includes disasters caused by enemy attacks, sabotage, other hostile actions, or disasters to individual homes, or other disasters manufactured, created or constructed by mankind.

- (5) Notwithstanding the above, the owner and developer of the property or person or persons responsible for such grading shall be deemed to have violated the provisions of Articles 13 through 16 of this chapter by grading without a permit.
- (b) The owner and developer of the property or the person or persons responsible for the initiation of grading shall be responsible for correcting any damages done by the grading on-site or off-site.
  - (1) Off-site correction(s) and restoration shall include but not be limited to damages to improvements within the public right-of-way, any portions of the city-owned separate storm sewer systems, or private drain systems and the removal of any sediment and debris from the public right-of-way and any drainage facility.
  - (2) On-site correction(s) and restoration shall include covering of exposed soil surfaces with planting, correction of improper excavation or fills, and drainage.
- (c) Where the grading work accomplished or commenced cannot be made to comply with the provisions of Articles 13 through 16 of this chapter, the person or persons responsible shall post a performance bond in an amount sufficient, as determined by the director, to ensure payment of all costs of restoring the land to its original condition, and any damages which have occurred to any improvement(s) in the public right-of-way in the event that the person or persons responsible do not satisfactorily perform said restoration. Such performance bond shall be maintained in force for a period of one year after the restoration work has been completed, and no certificate of completion for said work shall be issued by the director until one year has elapsed after the physical work of restoration has been completed.

(Added by Ord. 96-34; Am. Ord. 14-31)

**Sec. 14-14.5 Expiration of permit.**

- (a) Every grading or grubbing permit shall expire and become null and void by limitation unless the work permitted therein is started within 90 days after the date of issuance; if the work is suspended or abandoned at any time after the work is commenced for a period of 60 days; or one year after the date of issuance of the permit. Before such work can be recommenced, a new permit shall first be obtained to do so and the fee therefor shall be the fee as specified in Section 14-14.4. Permit fees for an expired permit even if no work has commenced shall not be refunded.
- (b) Every stockpiling permit shall expire and become null and void one year after the date of issuance and all stockpiled material temporarily stored on the premises shall be removed from the premises or used on the premises as fill material under a grading permit for fill prior to the expiration date. Upon written application the chief engineer may grant extension or renewal for an expired stockpiling permit. In granting such extension or renewal the chief engineer may attach such conditions as deemed appropriate to prevent the creation and maintenance of a nuisance or hazard to individuals and property. Permit fee for extension or renewal shall be the fee as specified above.

(Sec. 23-2.5, R.O. 1978 (1983 Ed.))

**Sec. 14-14.6 Denial of permit.**

If the chief engineer finds that the work as proposed by the applicant is likely to endanger any property or public way or structure or endanger the public health or welfare through environmental damage, the chief engineer shall deny the grading, grubbing or stockpiling permit. Factors to be considered in determining probability of hazardous conditions shall include, but not be limited to, possible saturation of the ground by rains, earth movements, dangerous geological conditions or flood hazards, undesirable surface water run-off, subsurface conditions such as the stratification and faulting of rock, nature and type of soil or rock. Failure of the chief engineer to observe or recognize hazardous conditions or the chief engineer’s failure to deny the grading, grubbing or stockpiling permit shall not relieve the permittee or the permittee’s agent from being responsible, nor cause the city, its officers or agents, to be held responsible for the conditions or damages resulting therefrom.

(Sec. 23-2.6, R.O. 1978 (1983 Ed.))

**Sec. 14-14.7 Suspension or revocation of permit.**

- (a) All permittees shall be required to comply with provisions of the NPDES permit if applicable including measures to control pollutants in storm water discharges during construction, and with all applicable laws, ordinances, rules or regulations of the State of Hawaii or of the City and County of Honolulu. The chief engineer shall, in writing, suspend or revoke a permit issued under the provisions of Articles 13 through 16 of this chapter whenever the permit has been issued on the basis of incorrect information supplied by the permittee; whenever the grading, grubbing or stockpiling is not being performed in accordance with the terms and provisions of the permit; whenever it is determined that the permittee has not complied with any provision of the NPDES permit if applicable and any other applicable law, ordinance, rule or regulation of the State of Hawaii or the City and County of Honolulu; or whenever the grading, grubbing or stockpiling discloses conditions that are objectionable or unsafe. Where a permit is revoked for any reason, there shall be no refund of any permit fees.
- (b) When a permit has been suspended the permittee may submit detailed plans and proposals for compliance with the provisions of Articles 13 through 16 of this chapter, and the NPDES permit if applicable and any other applicable laws, ordinances, rules or regulations of the State of Hawaii or the City and County of Honolulu, and for correcting the objectionable or unsafe conditions. Upon approval of such plans and proposals by the chief engineer, the chief engineer may authorize the permittee, in writing, to proceed with the work.
- (c) When a permit has been suspended and the permittee fails to take corrective action specified above within 30 days following the suspension, the chief engineer may correct the objectionable or unsafe conditions and the permittee shall be liable for the cost thereof, or, where a bond required by Section 14-14.8 has been filed with the city, from the surety executing such bond, or shall be deducted from the cash which has been deposited with the city in lieu of filing a bond.

(Sec. 23-2.7, R.O. 1978 (1983 Ed.); Am. Ord. 92-122)

**Sec. 14-14.8 Bond.**

- (a) **Bond Required.** A grading permit or stockpiling permit shall not be issued for any cut, fill or stockpiling involving quantities more than 500 cubic yards or for excavations or fills over 15 feet in vertical height, or for work being done in increments of 500 cubic yards or less, which is part of a larger development unless the permittee shall first file a bond for the benefit of the City and County of Honolulu; provided, that if the proposed grading or stockpiling is to be performed under an approved subdivision final map and a subdivision agreement, or bond or other security has been approved and accepted by the city under the subdivision rules and regulations of the City and County of Honolulu, or a contractor's performance bond accepted by the city, then the chief engineer shall not require a bond for grading or stockpiling. A copy of the approved and accepted subdivision bond or other security shall be presented as evidence by the applicant for a grading or stockpiling permit. At the option of the applicant, the applicant may either file a bond guaranteed by a surety company duly authorized to transact business within the State of Hawaii, or the applicant may deposit cash or letter of credit in lieu of a bond. No interest shall be paid by the city on such cash deposit. The provisions herein relating to a surety bond shall be equally applicable to a cash deposit pledged as a bond.
- (b) **Amount of Bond.** The amount of the bond shall be based upon the number of cubic yards of material in either excavation, fill or stockpiling, whichever is the greatest volume. The amount of the bond shall be computed as set forth in the following schedule:

<b>Volume of Material</b>	<b>Permit Bond</b>
10,000 cubic yards or less	\$8.00 per cubic yard;
over 10,000 to 100,000 cubic yards	\$80,000.00 plus \$3.00 per cubic yard for each additional cubic yard in excess of 10,000;
over 100,000 cubic yards	\$350,000.00 plus \$1.00 per cubic yard in excess of 100,000.

At the option of the applicant, the applicant may file a bond in an amount equal to the cost of all work and services required to complete all of the work under the grading or stockpiling permit as approved by the chief engineer. Cost estimates prepared by the permittee shall be subject to approval of the chief engineer to determine the exact amount of the bond.

- (c) Conditions. The bond shall be conditioned to be payable to the chief engineer, and upon failure of the permittee to complete all of the required work within the specified time, the chief engineer shall collect the monies from the bond and complete the necessary work to control soil erosion and sedimentation or all unfinished work required by the permit. The parties executing the bond shall be firmly bound to pay for this entire cost.

(d) Additional Conditions. Each bond shall provide that the surety shall be held and firmly bound unto the City and County of Honolulu for so long as the following conditions have not been met:

- (1) The permittee shall comply with all of the terms and conditions of the permit to the satisfaction of the chief engineer;
- (2) The permittee shall complete all of the work authorized under the permit within the time limit specified in the permit;
- (3) The surety company shall not terminate or cancel said bond until notified in writing by the chief engineer of any termination or cancellation.

(e) Period and Termination of Bond. The term of each bond shall begin upon the date of issuance of the permit and shall remain in effect for a period of one year after the date of completion of the work to the satisfaction of the chief engineer. Such completion shall be evidenced by a certificate signed by the chief engineer. In the event of failure to complete the work or failure to comply with all of the conditions and terms of the permit, the chief engineer may order the work to be completed as required by the permit and to the satisfaction of the chief engineer. The surety executing such bond or the cash depositor, shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the City and County of Honolulu, in causing any and all of such required work to be done, and said surety and the permittee assents to the completion of the work even though it is performed after the time allowed in the permit. Upon completion of such work by the city, the bond shall be terminated. In the case of a cash deposit, such a deposit or any unused portion thereof not required to complete the work authorized by the permit shall be refunded to the permittee.

(Sec. 23-2.8, R.O. 1978 (1983 Ed.); Am. Ord. 96-34)

#### Sec. 14-14.9 Inspection.

(a) Each permit issued under the provisions of Articles 13 through 16 of this chapter shall be deemed to include the right to the chief engineer or the chief engineer's authorized representatives to enter upon and to inspect the grading, grubbing, or stockpiling operations and if applicable the erosion control plan and provisions and measures to control pollutants in storm water discharges during construction.

(b) The permittee shall notify the chief engineer at least two days before the permittee or the permittee's agent begins any grading, grubbing or stockpiling. Where applicable and feasible the measures to control erosion and other pollutants shall be in place before any earth moving phase of the grading is initiated. A copy of the permit, the erosion control plans and the NPDES permit where applicable, plans and specifications for grading, grubbing or stockpiling shall be maintained at the site during the progress of any work.

(c) If the chief engineer or the chief engineer's representative finds that the work is not being done in conformance with Articles 13 through 16 of this chapter; or the plans; or the erosion control plans; or in accordance with accepted practices, the chief engineer shall immediately notify the person in charge of the grading work of the nonconformity and of the corrective measures to be taken. Grading operations shall cease until corrective measures satisfactory to the chief engineer have been taken. In addition, whenever the work is not being done in conformance with an NPDES permit, the state department of health will be notified.

(Sec. 23-2.9, R.O. 1978 (1983 Ed.); Am. Ord. 92-122)

### Article 15. Grading, Grubbing and Stockpiling

#### Sections:

- 14-15.1 Conditions of permit.
- 14-15.2 Special requirements.

#### Sec. 14-15.1 Conditions of permit.

The requirements of subsections (a), (b) and (c) may be modified by the director of planning and permitting based on the engineer's soils report and engineering slope hazard report.

(a) Height. Where a cut or fill is greater than 15 feet in height, terraces or benches shall be constructed at vertical intervals of 15 feet except that where only one bench is required, it shall be at the midpoint. The minimum width of such terraces or benches shall be at least eight feet and provided with drainage provisions to control erosion on the slope face and bench surface.

(b) Cut Slopes. Under the following soil conditions, no cut may be steeper in slope than the ratio of its horizontal to its vertical distance as shown below:

- (1) One-half horizontal to one vertical in unweathered rock or mudrock;
- (2) One horizontal to one vertical in decomposed rock;

(3) One and one-half horizontal to one vertical in soils of low plasticity, cuts of any height in highly plastic soils shall be as recommended in the applicable report.

(c) Fill Slopes. Fills shall not be steeper than a ratio of two horizontal to one vertical except that fill using highly plastic clays shall have slopes as recommended in the applicable report.

(d) Distance from property line. The horizontal distance from the top of a cut slope or the bottom of a fill slope to the adjoining property line shall not be less than as follows:

Height of Cut or Fill	Distance from Property Line (in feet)
Zero feet to 4 feet	2
More than 4 feet to 8 feet	4
More than 8 feet to 15 feet	6
More than 15 feet	8

These requirements may be modified by the director of planning and permitting when cuts or fills are supported by retaining walls or when the permittee submits an engineer's soils report or engineering slope hazard report stating that the soil conditions will permit a lesser horizontal distance without causing damage or danger to the adjoining property.

(e) Area Opened. The maximum-sized parcel of land that may be opened for grading or grubbing is 15 acres. Noncontiguous increments may be worked concurrently provided no single parcel exceeds 15 acres, provided the work is in conformance with the NPDES permit. The area of land that may be opened may be reduced by the director of planning and permitting to control pollution and minimize storm damage. However, if soils, hydrologic, climatic and construction conditions warrant, and adequate erosion prevention measures have been taken, the director of planning and permitting may authorize additional area to be opened. Additional area may not be opened for grading or grubbing until measures to prevent dust or erosion problems in the area already graded or grubbed have been undertaken to the satisfaction of the director.

(f) Fills. The requirements of subdivisions (1), (2) and (3) may be modified by the director of planning and permitting if the permittee submits an engineer's soils report recommending criteria for the proposed fill for its intended use.

(1) Fill material shall be selected to meet the requirements and conditions of the particular fill for which it is to be used. The fill material shall not contain vegetation or organic matter. Where rocks, concrete, or similar materials of greater than eight inches in diameter are incorporated into the fill, they shall be placed in accordance with the recommendation of a soils engineer.

(2) Preparation of Ground Surface. Before placing or stockpiling, the natural ground surface shall be prepared by removing the vegetation and, if required by the director of planning and permitting, shall be notched by a series of benches and/or subsurface drains installed. No fill shall be placed over any water spring, marsh, refuse dump, nor upon a soft, soggy or springy foundation; provided, that this requirement may be waived by the director of planning and permitting if the permittee submits an engineer's soils report recommending criteria for the fill.

(3) Placement and Compaction. Fill materials shall be spread and compacted in a series of eight-inch to 10-inch layers when compacted, unless otherwise recommended by the soils engineer. Except for slopes, the fill shall be compacted to 90 percent of maximum density as determined by the most recent ASTM soil compaction test D1557 unless the engineer's soils report justifies a lesser degree of compaction, or unless otherwise recommended by the soils engineer.

(g) Vegetation. Whenever feasible, natural vegetation should be retained by becoming part of the erosion control plan during construction or part of the permanent landscaping plan if applicable. If it is necessary that vegetation be removed, trees, timber, plants, shrubbery and other woody vegetation, after being uprooted, displaced or dislodged from the ground by excavation, clearing or grubbing, shall not be stored or deposited along the banks of any stream, river or natural watercourse. After being uprooted, displaced or dislodged, such vegeta-

tion shall be disposed of by means approved in writing by the director of planning and permitting or removed from the site within a reasonable time, but not to exceed three months.

- (h) **Drainage Provisions.** Adequate provisions shall be made to prevent surface waters from damaging the cut face of an excavation or the sloped surfaces of a fill. Positive drainage shall be provided to prevent the accumulation or retention of surface water in pits, gullies, holes or similar depressions. All drainage facilities shall be designed to carry surface waters to a street, storm drain inlet or natural watercourse and shall include an erosion and sedimentation control plan to prevent sediment-laden runoff from leaving the site, either during or following construction. The director of planning and permitting may require such detention or retention drainage structures and pipes to be constructed or installed, which in the director's opinion, are necessary to prevent erosion damage, prevent sediment-laden runoff from leaving the site, and to satisfactorily carry off surface waters. The flow of any existing and known natural underground drainage shall not be impeded or changed so as to cause damage to adjoining property.
- (i) **Debris Prohibited.** No person shall perform any grading operation so as to cause falling rocks, soil or debris in any form to fall, slide or flow onto adjoining properties, streets or natural watercourses.
- (j) **Work Days.** No grading work shall be done on Saturdays, Sundays and holidays at any time without prior notice to the director of planning and permitting, provided such grading work is also in conformance with Hawaii Administrative Rules, Chapter 11-43, "Community Noise Control for Oahu."
- (k) **Dust Control.** All work areas within and without the actual grading area shall be maintained free from dust which will cause a nuisance or hazard to others and in conformance with the air pollution control standards contained in Hawaii Administrative Rules, Chapter 11-60, "Air Pollution Control."
- (l) **Water Quality Standards.** All grading operations authorized under Articles 13 through 16 of this chapter shall be performed in conformance with the applicable provisions of the water pollution control and water quality standards contained in Hawaii Administrative Rules, Chapter 11-55, "Water Pollution Control" and Chapter 11-54, "Water Quality Standards" and if applicable, the NPDES permit for the project. Any dewatering discharge into state waters will require an NPDES permit from the department of health under Chapter 11-55, "Water Pollution Control." Any dewatering discharge into the city-owned storm sewer system will require a construction dewatering permit from the director of planning and permitting and an NPDES permit for the discharge of any pollutant into state waters through the city-owned storm sewer system from the department of health, State of Hawaii.
- (m) **Notification of Completion.** The permittee or the permittee's agent shall notify the director of planning and permitting or the director's representative when the grading operation is ready for final inspection. Final approval shall not be given until completion of all work including installation of all drainage structures and their protective devices, completion of all planting showing a healthy growth in conformance with the approved plans and specifications, and the required reports have been submitted.
- (n) **Report After Grading.**
  - (1) When grading involves cuts or fills for which an engineer's soils report was required, the permittee shall submit a final report, prepared by an engineer, upon the completion of such work. This report shall contain:
    - (A) A description of materials used in the fill and its moisture content at the time of compaction, the procedure used in depositing and compacting the fill, the preparation of original ground surface before making the fill, but not limited to benching and subsurface drainage, and a plan or tabulation showing the general location and elevation of compaction tests made in the fill together with a tabulation of relative compaction densities obtained at each location, the location of subdrains and other pertinent features of the fill necessary for its stability.
    - (B) A certification that the work was done in conformity to this chapter, the approved plans and specifications and the engineer's soils report.
  - (2) Where a slope hazard evaluation and mitigation plan was required to be submitted with a grading permit application, the permittee shall submit a final assessment report, prepared by an engineer, upon the completion of site work, prior to building construction. The assessment report shall contain a verification that the prevention measures and any stabilization measures called for in the engineering slope hazard report or construction plans were done in conformity with this chapter, and the approved plans and specifications.
- (o) **As-Graded Plan.** Upon completion of grading areas over one acre or areas graded under subdivision rules, an as-graded plan prepared by an engineer or land surveyor shall be submitted if required by the director of planning and permitting.

(Sec. 23-3.1, R.O. 1978 (1983 Ed.); Am. Ord 92-122, 04-27)



**Sec. 14-15.2 Special requirements.**

- (a) Any person performing or causing to be performed any excavation or fill shall, at such person's own expense, provide the necessary means to prevent the movement of earth of the adjoining properties, to protect the improvements thereon, and to maintain the existing natural grade of adjoining properties.
- (b) Any person performing or causing to be performed, any excavation or fill shall be responsible for the maintenance or restoration of street pavements, sidewalks and curbs, and improvements of public utilities which may be affected. The maintenance or restoration of street pavements, sidewalks and curbs shall be performed in accordance with the requirements of the City and County of Honolulu and the maintenance and restoration of improvements of public utilities shall be in conformity with the standards of the public utility companies affected. At cuts fronting any street, a suitable and adequate barrier shall be installed to provide protection to the public.
- (c) Any person depositing or causing to be deposited, any silt or other debris in ditches, watercourses, drainage facilities and public roadways, shall remove such silt or other debris. In case such person shall fail, neglect or refuse to comply with the provisions of this section within 48 hours after written notice, served upon such person, either by mail or by personal service, the chief engineer may proceed to remove the silt and other debris or to take any other action the chief engineer deems appropriate. The costs incurred for any action taken by the chief engineer shall be payable by such person.
- (d) At any stage of the grading, grubbing or stockpiling work, if the chief engineer finds that further work as authorized by an existing permit is likely to create soil erosion problems or to endanger any life, limb or property, the chief engineer may require safety precautions, which may include but shall not be limited to the construction of flatter exposed slopes, the construction of additional silting or sediment basins, drainage facilities or benches; the removal of rocks, boulders, debris and other dangerous objects which, if dislodged, are likely to cause injury or damage; the construction of fences or other suitable protective barriers; or may refer to the local soil and water conservation district for advice from the soil conservation service or other appropriate agencies on the planting or sodding of slopes and bare areas. All planted or sodded areas shall be maintained. An irrigation system or watering facilities may be required by the chief engineer.
- (e) At any stage of the grading, grubbing or stockpiling operations, if the chief engineer finds that further work as authorized by an existing permit is likely to create dust problems which may jeopardize health, property or the public welfare, the chief engineer may require additional dust control precautions and, if these additional precautions are not effective in controlling dust, may stop all operations. These additional dust control measures may include such items as sprinkling water, applying mulch treated with bituminous material, or applying hydro mulch.
- (f) Hillside lots shall be graded in such a manner that any parcels which may be created therefrom, including all separate building sites which may be contained within said parcels, can be satisfactorily graded and developed as individual building sites.

(Sec. 23-3.2, R.O. 1978 (1983 Ed.))

### **Article 16. Violations, Penalties and Liabilities for Grading, Grubbing and Stockpiling**

**Sections:**

- 14-16.1 General.**
- 14-16.2 Notice of violation—Stop work.**
- 14-16.3 Criminal prosecution.**
- 14-16.4 Administrative enforcement.**
- 14-16.5 Liability.**
- 14-16.6 Rule-making powers.**
- 14-16.7 Decisions of the director of planning and permitting.**
- 14-16.8 Depository of civil penalties.**

**Sec. 14-16.1 General.**

It is unlawful for any person to do any act forbidden, or to fail to perform any act required, by the provisions of Articles 13 through 16 of this chapter. Whenever a corporation violates any of the provisions of Articles 13 through 16 of this chapter, the violation shall be deemed to be also that of the individual directors, officers or agents of the

corporation who in their capacity as directors, officers or agents of such corporation have authorized, ordered or done any of the acts constituting in whole or in part such violation.

(Sec. 23-4.1, R.O. 1978 (1983 Ed.); Am. Ord. 90-71)

**Sec. 14-16.2 Notice of violation—Stop work.**

- (a) Whenever any person, firm or corporation violates any provision of Articles 13 through 16 of this chapter, the director of planning and permitting shall serve the person, firm or corporation with a notice of violation which shall require the person, firm or corporation responsible to correct the violation. A notice of violation must be served upon responsible persons either personally or by certified mail. However, if the whereabouts of such persons are unknown and the same cannot be ascertained by the director of planning and permitting in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation may be served by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.
- (b) The notice of violation shall include but not be limited to the following information:
  - (1) The date of issuance of the notice;
  - (2) The name and address of the person or entity notified and the location of the violation;
  - (3) The section number of the ordinance, code or rule which has been violated;
  - (4) The nature of the violation;
  - (5) An order to stop work if deemed necessary by the director of planning and permitting; and
  - (6) The deadline for correction of the violation.
- (c) If the director of planning and permitting deems it necessary for work to stop, the work shall cease upon receipt of the notice and shall not resume until corrective measures satisfactory to the director have been taken. If the notice includes a stop work order, the director shall notify and transmit a copy to the chief of police concurrently with the issuance of the notice. The chief of police shall have the power to enforce the stop work order pursuant to Section 6-1604, Revised Charter of Honolulu, 1973, as amended.

(Added by Ord. 90-71; Am. Ord. 91-07, 15-15)

**Sec. 14-16.3 Criminal prosecution.**

Any person, firm or corporation violating any of the provisions of Articles 13 through 16 of this chapter shall be deemed guilty of a misdemeanor for each and every day or portion thereof during which any violation of any provisions of this chapter is committed and, upon conviction of any such violation, such person shall be punishable by a fine of not more than \$1,000.00 or by imprisonment for not more than one year, or by both fine and imprisonment.

(Added by Ord. 90-71)

**Sec. 14-16.4 Administrative enforcement.**

- (a) In lieu of or in addition to enforcement pursuant to Section 14-16.3, if the director of planning and permitting determines that any person, firm or corporation is not complying with a notice of violation, the director of planning and permitting may issue an order to the person or entity responsible for the violation, pursuant to this section.
- (b) Contents of Order.
  - (1) The order may require the party responsible for the violation to do any or all of the following:
    - (A) Correct the violation within the time specified in the order;
    - (B) Upon compliance with the provisions of HRS Chapter 91, pay a civil fine not to exceed \$5,000.00 in the manner, at the place and time specified in the order;
    - (C) Upon compliance with the provisions of HRS Chapter 91, pay a civil fine not to exceed \$5,000.00 per day for each day in which the violation occurs, in the manner and at the time and place specified in the order; and
    - (D) Restore the land affected by the violation to its original condition and obtain a certificate of completion from the director of planning and permitting. Restoration of the land must be completed within 30 days of the order becoming final.
  - (2) The order shall advise the party responsible for the violation that the order shall become final 30 calendar days after the date of its delivery.

- (c) **Recurring Violations.**
- (1) Persons who have previously committed a violation under this chapter, in a five-year period, may be required to pay initial and daily civil fines under subsection (b) hereof in amounts up to two times the fine amounts previously imposed by the director of planning and permitting for the immediately preceding violation.
  - (2) Where a person commits a violation under this chapter, at the same location, more than one time in a 12-month period, the director of planning and permitting shall refer the finding of violation to the prosecuting attorney for initiation of a criminal prosecution pursuant to Section 14-16.3.
- (d) **Service of Notice of Order.** A notice of order must be served upon responsible persons either personally or by certified mail. However, if the whereabouts of such persons are unknown and the same cannot be ascertained by the director of planning and permitting in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of order may be served by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.
- (e) **Judicial Enforcement of Order.** The director of planning and permitting may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. If a violator does not pay the civil penalty assessed by the director of planning and permitting within 30 days after it is due, or does not request an administrative hearing to contest the violation within the time provided by the order, the director of planning and permitting shall request the corporation counsel to institute a civil action to recover the amount of the assessment. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director of planning and permitting need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.
- (f) **Injunctive Relief.** The director of planning and permitting may institute a civil action in any court of competent jurisdiction to enjoin any violation, or threatened violation of this chapter. The institution of an action for injunctive relief does not relieve any person from liability under the civil and criminal penalties for violations of this chapter.
- (g) **Exception –** At the discretion of the director, the owner and developer of the property or person or persons responsible for such grading shall be deemed to have not violated the provisions of Articles 13 through 16 of this chapter by grading without a permit in cases of natural or man-made disasters. For the purposes of this section, a “natural disaster” includes disasters caused by fire, flood, tidal waves, hurricanes, tsunamis, volcanic eruptions, earthquakes, or other natural causes; and a “man-made disaster” includes disasters caused by enemy attacks, sabotage, other hostile actions, or disasters to individual homes, or other disasters manufactured, created or constructed by mankind.

(Added by Ord. 90-71; Am. Ord. 14-30, 15-15)

**Sec. 14-16.5 Liability.**

The provisions of Articles 13 through 16 of this chapter shall not be construed to relieve or alleviate the liability of any person for damages resulting from performing, or causing to be performed, any grading, grubbing or stockpiling operation. The city, its officers and employees shall be free from any liability, cost or damage which may accrue from any grading, grubbing or stockpiling or any work connected therewith, authorized by Articles 13 through 16 of this chapter.

(Sec. 23-4.2, R.O. 1978 (1983 Ed.); Am. Ord. 90-71)

**Sec. 14-16.6 Rule-making powers.**

The director of planning and permitting shall be empowered to promulgate rules and regulations pursuant to HRS Chapter 91, for the implementation of the provisions of Articles 13 through 16 of this chapter.

(Sec. 23-4.3, R.O. 1978 (1983 Ed.); Am. Ord. 90-71, 15-15)

**Sec. 14-16.7 Decisions of the director of planning and permitting.**

Decisions of the director of planning and permitting made in accordance with the provisions of Articles 13 through 16 of this chapter, and decisions involving variations from the standards referred to herein, or both, shall be made a matter of record in the permit file.

(Sec. 23-4.4, R.O. 1978 (1983 Ed.); Am. Ord. 90-71, 15-15)

**Sec. 14-16.8 Depository of civil penalties.**

Payments of civil penalties are to be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and shall be used for expenses related to enforcement activities of the department of planning and permitting.

(Added by Ord. 14-30)

**Article 17. Excavation and Repairs of Streets and Sidewalks****Sections:**

- 14-17.1 Permit required—Application—Insurance—Bond—Permit fee.**
- 14-17.2 Notice of commencement, prosecution of work and inspection.**
- 14-17.3 Trench excavation, backfill and pavement restoration.**
- 14-17.4 Repairs by city.**
- 14-17.5 Charges to be levied for work done by the city for the board of water supply—Disposition.**
- 14-17.6 Indemnification of city.**
- 14-17.7 Violation—Penalty.**

**Sec. 14-17.1 Permit required—Application—Insurance—Bond—Permit fee.**

- (a) No person, including city officials and employees, shall, in any manner or for any purpose, break up, dig up, disturb, undermine or dig under, any public highway, street, thoroughfare, alley or sidewalk or any other public place, or cause the same to be done without having first obtained a permit therefor from the chief engineer; provided, that work to accomplish emergency repairs to utilities may be started without a permit. When such emergency work is performed, the chief engineer or the chief engineer's authorized representative shall be notified of the location and type of the emergency not later than the first work day following the emergency. A written permit covering the emergency work shall be obtained from the chief engineer not later than 10 working days following the emergency. The city road division shall not be required to obtain a permit for routine street maintenance, repair or resurfacing provided that such work does not require excavating below the sub-base course. City departments shall not be required to obtain a permit for excavating single holes at any one location in sidewalk area for installation of pipe supported signs, markers, meters or planting of trees.
- (b) Any person desiring the permit required under this section shall make application therefor to the chief engineer on a form prescribed by the chief engineer. As a condition precedent to the issuance of any such permit, the chief engineer shall require:
- (1) The securing of insurance naming the city as an additional assured, to protect it against any and all claims or action for injury and death to person or property damages due to any act or omission of the holder of the permit arising out of any work done under said permit, said insurance to be in the amount of \$100,000.00 for property damages per occurrence and in an amount not less than \$500,000.00 for bodily injury or death. A public utility company performing work for installation of service connections, for the location of troubles in pipes or conduits, or for making repairs thereto may furnish a certificate of insurance listing the limits of liability which shall equal or exceed the amounts specified above for each and every service connection, trouble location or repair work accomplished by the company's own forces during the term of the policy and certifying that the insurance company will not cancel or materially alter the coverage without giving the city 15 days advance notice; and
  - (2) When the work of restoration is not performed by the city, a bond shall be required in favor of the city, extending for a period not to exceed one year after approval of any restored pavement, sidewalk or other public improvement, to ensure the proper restoration thereof. The amount of the bond shall be not less than \$1,000.00 or the estimated cost of the excavation and restoration work whichever is higher. Utility companies shall be responsible for work and repairs in existing public streets performed by its employees, contractors or subcontractors. In lieu of furnishing a separate bond for each permit a utility company may furnish written guarantee to the city that the company will be responsible for the restoration work for a period not to exceed one year after satisfactory completion of the restoration work.

- (c) Before issuing a permit, the chief engineer shall:
  - (1) Require the presentation of a plan, drawn to scale, showing the location of each proposed excavation and the dimensions thereof including the surface area of said opening in paving, sidewalk and other structures, the nature, size, length and purpose of the structure to be installed therein, and such other details and information as the chief engineer may require to be shown upon the plan. In lieu of the plan, a single line sketch, drawn to scale, may be submitted to show the location of each excavation for a service connection, for location of trouble or for repair to utilities;
  - (2) Obtain clearance from city departments having underground installations and from the various utility companies prior to issuance of the permit;
  - (3) Collect a permit fee based on the schedule below. The permit fee shall not be refundable even if the applicant, after issuance of the permit, decides not to proceed with the construction.

(A)

<b>Work</b>	<b>Permit Fee</b>
Service connection	\$50.00
Repairs to utilities	\$50.00
Trench for installation of pipelines, underground cables, etc. for the first 20 lineal feet, plus \$10.00 for each additional 10 lineal feet or any fraction thereof	\$195.00

(B) When the work is performed by or on behalf of the city, the permit fee will be waived.

All permit fees shall be deposited in the highway fund.

- (d) Each permit shall be deemed to include the provision that all surplus excavated material, if desired by the chief engineer, shall be carted or hauled to and deposited upon such place as may be directed by the chief engineer at the expense of the permittee. The maximum distance such material is to be hauled shall not exceed the distance between the job site and the nearest city and county corporation yard.
- (e) Every trenching permit shall expire and become null and void one year after the date of issuance of the permit. Upon expiration of a permit, no work shall be commenced unless a new permit is first obtained. Permit fee for a new permit shall be the fee as specified above.
- (f) The permittee shall also obtain a permit from the city department of transportation services before any work on any portion of public street may begin.
- (g) Failure to obtain any permit or the violation of any provision of this section shall be deemed a misdemeanor. (Sec. 20-1.1, R.O. 1978 (1983 Ed.); Am. Ord. 92-122, 03-12, 14-4, 17-28)

**Sec. 14-17.2 Notice of commencement, prosecution of work and inspection.**

- (a) Notice of Commencement of Work. At least three working days before the work is started, the permittee or the permittee’s representative shall give notice of the time of commencement of the work to the chief engineer or the chief engineer’s representative.
- (b) Prosecution of Work. After the work has begun it shall be diligently and continuously prosecuted until completed. All work shall be completed within the time specified in the permit unless an extension of time for good cause shown is granted by the chief engineer.
- (c) Inspection. All work authorized under Articles 17 through 22 of this chapter shall be subject to inspection by the chief engineer or the chief engineer’s authorized representative. (Sec. 20-1.2, R.O. 1978 (1983 Ed.))

**Sec. 14-17.3 Trench excavation, backfill and pavement restoration.**

- (a) Trench excavation and backfill shall be accomplished in accordance with the applicable provisions contained in the Standard Specifications for Public Works Construction dated September 1986 and Standard Details for Public Works Construction, dated September 1984, as amended, of the department of public works, City and County of Honolulu.
- (b) The permittee shall provide, in connection with the work covered by the permit, all necessary traffic control devices which shall conform to the requirements of the “Rules and Regulations Governing the Use of Traffic Control Devices at Work Sites or Adjacent to Public Streets and Public Highways” of the highway safety

coordinator, State of Hawaii. The permittee shall be responsible for all damages of every kind or nature suffered because of the work done by the permittee.

- (c) In dewatering trenches, the discharge shall not be drained directly onto the street or gutter. In urban areas and areas where a storm sewer system has been installed, the discharge shall be drained to the nearest storm sewer by the use of pipes or other suitable means acceptable to the chief engineer. If necessary the discharge shall be processed, filtered, ponded or otherwise treated to comply with the applicable provisions of Hawaii Administrative Rules, Chapter 11-54, "Water Quality Standards" and Chapter 11-55, "Water Pollution Control" and any other applicable federal, state, and city and county ordinances and regulations concerning water pollution prior to its release into waterways or city storm sewer systems. No work shall commence unless a construction dewatering permit is first obtained from the chief engineer. The permittee is also required to obtain a NPDES permit for the discharge of any pollutant into state waters through the city-owned storm sewer system from the department of health, State of Hawaii. The city shall receive a copy of the NPDES permit and all analysis of the discharge required under the NPDES permit whenever the city-owned storm sewer system is used for the dewatering operation. Whenever the discharge is released directly into waterways not owned by the city, only a NPDES permit is required.
- (d) Concrete envelope or jacket for pipes or duct lines shall be not more than six inches wider than the width of the concrete envelope or jacket shown on the plan or drawings submitted by the applicant for a trenching permit. Whenever this tolerance is exceeded the sides of the concrete envelope or jacket shall be formed to maintain the dimensions shown on the plan or drawings.
- (e) The permit holder shall, upon completion of the backfilling and compaction of any excavation and after inspection and approval by the chief engineer, immediately commence the necessary work to restore the foundation and surface, including any public structure appurtenant thereto, to its original or equally good condition. The chief engineer may require compaction tests be performed to assure that the backfill has been compacted to the required density. Backfill not conforming to the specified degree of compaction shall be recompact or removed and replaced with suitable material. Restoration shall be accomplished in accordance with the applicable provisions contained in the Standard Specifications for Public Works Construction dated September 1986 and Standard Details for Public Workers Construction dated September 1984, as amended, of the department of public works, City and County of Honolulu. Pavement restoration over the trench excavation shall be similar to that existing prior to the excavation, i.e., concrete base course shall be replaced with concrete of the same thickness.
- (f) When trenching in concrete sidewalks or concrete pavement the concrete to be removed shall first be cut with a saw to a depth of not less than one-fourth the depth of the slab. The concrete shall be cut so as to leave a six-inch wide undisturbed surface between the cut and the side of the trench. When any portion of a sidewalk block measuring four feet or less in dimension is cut, trenched or damaged during construction, the entire block shall be removed and replaced. A sidewalk block greater than four feet in dimension which is cut, trenched or damaged shall be removed and replaced in such a manner that the replaced and remaining strip or block shall be not less than four feet wide. The replaced sidewalk block shall be scored, finished, and colored to match the finish and color of the adjacent blocks.
- (g) All agencies having construction performed under a trenching permit shall submit as-built drawings to the chief engineer showing the actual construction performed.  
(Sec. 20-1.3, R.O. 1978 (1983 Ed.); Am. Ord. 92-122)

#### Sec. 14-17.4 Repairs by city.

In the case of any excavation which has not been backfilled or restored in accordance with the provisions of this article, or in the case where the excavation poses hazards or nuisances, the chief engineer shall make or cause to be made, the necessary repairs and the expenses thereof shall be charged to and collected from the permit holder or any surety where a bond has been required, or the person responsible for the excavation in the event no permit has been obtained. Such repairs shall include, but not be limited to, the restoration of the foundation and surface, reexcavation and backfilling of excavations, repairs to any public structure and replacement of any public structure not properly restored. (Sec. 20-1.4, R.O. 1978 (1983 Ed.); Am. Ord. 92-122)

#### Sec. 14-17.5 Charges to be levied for work done by the city for the board of water supply—Disposition.

(a) For any work done by the city for the board of water supply under the permit required by this article, charges for restoring the foundation and surface to its original or equally good condition shall be made by the city against the board of water supply.

(b) Charges for the patching of any trench shall be at the following rates. These rates shall be escalated on a fiscal year basis by the representative consumer price index factor for the year preceding.

Asphalt concrete	\$ 4.05 per square foot
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Concrete	\$19.54 per square foot
Asphaltic concrete on concrete	\$22.05 per square foot

(c) All monies collected from charges herein levied shall be deposited into the highway fund and made available for purposes of that fund.

(Sec. 20-1.5, R.O. 1978 (1983 Ed.); Am. Ord. 92-122)

Sec. 14-17.6 Indemnification of city.

(a) The holder of a permit shall indemnify and save harmless the city, the officers and agents thereof from all claims, demands, suits, actions or proceedings of every name, character and description which may be brought against the city for or on account of any injuries or damages to any person or property received or sustained by any person as a consequence of any act or acts of the holder of permit on work done under the permit.

(b) The city while making repairs shall use every precaution required of the holder of permit as to barricades, lights and watchpersons for the safety of the public, but such action shall not relieve the holder of the permit from responsibility for accidents, should any occur.

(Sec. 20-1.6, R.O. 1978 (1983 Ed.))

Sec. 14-17.7 Violation—Penalty.

Any person who violates any provision of this article shall, upon conviction, be punished by a fine not exceeding \$1,000.00 or by imprisonment not exceeding three months, or by both for each separate offense. Each day of violation shall constitute a separate offense. In addition, any person upon conviction shall be liable for the total cost of any restoration of the foundation and surface, reexcavation and backfilling of excavations, repairs to any public structure and replacement of any public structure not properly restored. (Sec. 20-1.7, R.O. 1978 (1983 Ed.); Am. Ord. 92-122)

Article 18. Regulations Governing the Construction of Sidewalk, Curb or Driveway  
Within the Right-of-Way of Public Streets

Sections:

- 14-18.1 Short title and purpose.
- 14-18.2 Definitions.
- 14-18.3 Sidewalks, curbs and driveways to conform to grade, standards and specifications.
- 14-18.4 Permit required.
- 14-18.5 Notice of reconstruction or repair of sidewalks, curbs or driveways.
- 14-18.6 Notice to owner.
- 14-18.7 Failure to reconstruct or repair sidewalks, curbs or driveways.
- 14-18.8 Standards and specifications for sidewalks.
- 14-18.9 Standard details and specifications for curbs.
- 14-18.10 Standards and specifications for driveways.
- 14-18.11 Standards and specifications for wheelchair ramps.
- 14-18.12 Ramp in gutter prohibited.
- 14-18.13 Conversion of abandoned driveway to sidewalk.
- 14-18.14 Inspection and approval.
- 14-18.15 Violation—Penalty.

Sec. 14-18.1 Short title and purpose.

(a) Short Title. This article shall be known as the “sidewalk code,” may be cited as such, and is referred to herein as “this code.”

(b) Purpose. The purpose of this article is to regulate, control and provide uniformity in the construction, reconstruction, installation, improvement and repairing of sidewalk, curb and driveway.

(Sec. 20-2.1, R.O. 1978 (1983 Ed.))

Sec. 14-18.2 Definitions.

For the purpose of this article:

“Abandoned driveway” means a driveway no longer used for egress and ingress purposes by motor vehicles.

“Asphalt concrete walkway” means a temporary walkway along a street constructed of asphalt concrete and intended for use by pedestrians.

“Building superintendent” means the director and building superintendent of the building department or such person’s duly authorized representative.

“Chief engineer” means the director and chief engineer of the department of public works or such person’s

duly authorized representative.

“Curb” means the raised border of concrete, asphaltic concrete or stone along the edge of the pavement of a street.

“Driveway” means a facility constructed between the pavement of a roadway and any abutting property, which is used by motor vehicles for egress or ingress to the property.

“Owner” means any person, firm, corporation, partnership or other legal entity holding title to any property adjoining any street in the city and county or any lessee thereof holding under a recorded lease.

“Sidewalk” means that portion of a street between a curb line or the pavement of a roadway, and the adjacent property line intended for use by pedestrians, including any street setback area acquired by the city for road widening purposes.

“Street” means a public highway, as defined in HRS Section 264-1, unless otherwise specified.

“Wheelchair ramp” means a facility constructed between the curb and concrete sidewalk to provide access from the street to the sidewalk for wheelchairs. (Sec. 20-2.2, R.O. 1978 (1987 Supp. to 1983 Ed.))

#### Sec. 14-18.3 Sidewalks, curbs and driveways to conform to grade, standards and specifications.

All sidewalks, curbs and driveways shall be constructed according to standards and specifications as herein provided and shall conform to established grades. (Sec. 20-2.3, R.O. 1978 (1983 Ed.))

#### Sec. 14-18.4 Permit required.

A permit and the payment of fees are required under Chapter 18 of this code to perform work under this article. (Sec. 20-2.4, R.O. 1978 (1983 Ed.))

#### Sec. 14-18.5 Notice of reconstruction or repair of sidewalks, curbs or driveways.

Whenever the building superintendent finds that any sidewalk, curb or driveway is in need of reconstruction or repair in the interest of public safety or welfare, and such need is caused by action or actions attributable to the owner of land abutting such sidewalk, curb or driveway, the building superintendent is authorized to give notice thereof to such owner and to require such owner to reconstruct or repair the sidewalk, curb or driveway. (Sec. 20-2.5, R.O. 1978 (1983 Ed.))

#### Sec. 14-18.6 Notice to owner.

(a) The notices specified in Section 14-18.5 shall be given by the building superintendent either by publication thereof in a daily newspaper of general circulation in the city once in each of three consecutive weeks, or by mailing a copy of such notice by certified mail to the owner.

(b) Publication and Notice By Mail. When the building superintendent has doubt that the owner received the notice by mail, such notice shall also be given by publication.

(c) Contents of Notice. The notice shall set forth the nature of the reconstruction or repair to be made, the location thereof, and a specific direction to such owner to reconstruct or repair such sidewalk, curb or driveway. (Sec. 20-2.6, R.O. 1978 (1983 Ed.))

#### Sec. 14-18.7 Failure to reconstruct or repair sidewalks, curbs or driveways.

(a) Time Limit. If after the expiration of 60 days after the date of publication or after the receipt of the notice thereof an owner fails to reconstruct or repair the sidewalk, curb or driveway, the building superintendent shall issue a work order to the chief engineer to reconstruct or repair the sidewalk, curb or driveway as provided in subsection (b) of this section.

If both written notice and publication is given to an owner, the expiration of the 60 days shall be based on whichever form of notice was last given.

(b) Reconstruction or Repair of Sidewalks, Curbs or Driveways By City. The chief engineer is authorized and empowered to pay for the reconstruction or repair of sidewalks, curbs or driveways out of city funds or to have the work done by city employees.

(c) Charge to Owner. When the city has reconstructed or repaired the sidewalk, curb or driveway or has paid for such work, the cost thereof including overhead costs, plus accrued interest at the rate of seven percent per annum shall be charged to the owner of such property and the owner shall be billed therefor by mail. The bill shall apprise the owner that failure to pay the bill will result in a lien. Interest at the rate of seven percent per annum shall accrue from the 31st calendar day after the bill has been mailed to the owner for payment in the event the same has not been paid prior thereto.

(d) Statement of Chief Engineer. Where the full amount due the city is not paid by such owner within 30 calendar days after the bill has been mailed for payment, the chief engineer shall cause to be recorded with the city director of finance a statement showing the cost and expense incurred for the work, the date the work was done and the location of the property on which said work was done and file the same with the director of finance who shall refer the collection thereof to the corporation counsel.

(e) Mechanic's and Materialman's Lien Procedure. Any work done by the city hereunder is deemed to be done pursuant to quasi-contract or constructive contract between the city and the owner. Based on the foregoing contractual relationship, if the owner fails to pay the amount duly noted on the statement filed by the chief engineer, the corporation counsel may proceed to file a mechanic's and materialman's lien pursuant to the provisions of Part II of HRS Chapter 507, or any other appropriate lien procedures. (Sec. 20-2.7, R.O. 1978 (1983 Ed.))

Sec. 14-18.8 Standards and specifications for sidewalks.

(a) Generally. All sidewalks shall be constructed in accordance with the Standard Details, department of public works, City and County of Honolulu, dated August, 1976, as amended, and with the applicable sections of the Standard Specifications for Public Works Construction, department of public works, City and County of Honolulu, dated May, 1975, as amended.

(b) Exceptions.

(1) Winding Sidewalks. Any and all sidewalks shall be constructed adjacent to the property lines; provided, however, the chief engineer may authorize winding sidewalks and provided further, that such sidewalks shall not cause additional hazards to the public as the chief engineer may determine.

(2) Other Surface Encroachments. The chief engineer may also authorize the placement of walls, fences, benches and other surface encroachments in the sidewalk area provided that application for such encroachments are made in writing to the chief engineer and provided further, that such encroachments do not unduly interfere with the public use of such space for utilities and pedestrian traffic. Such encroachments shall be removed at the owner's expense upon notification by the building superintendent when recommended by the chief engineer that the space is needed for public use.

(3) Notice. The building superintendent upon such recommendation by the chief engineer shall issue a notice in writing to the owner directing the owner to remove the encroachments or improvements. The

work shall be done within such reasonable time limit as shall be stated in such notice which in no case shall be less than 20 days nor more than 60 days. Said notice may be given by personal service or by mailing a copy of such notice by certified mail to the owner.

- (4) Failure to Remove Encroachments. Upon failure of the owner to comply with such notice within the time mentioned therein, the building superintendent shall cause such encroachments to be removed. The costs thereby incurred by the city shall be billed to such owner and shall, if not paid to the city by such owner within 30 days after such billing date, become a lien upon the property abutting such encroachments.
- (5) Whenever the chief engineer finds that in the interest of public safety or welfare an asphalt concrete walkway is necessary for pedestrians, the chief engineer is authorized to construct such a walkway.
- (c) Filing Fee. A fee of \$200.00 shall be required for each application submitted under subsection (b)(2) dealing with other surface encroachments. All application fees collected shall not be refundable and shall be deposited into the highway fund.

(Sec. 20-2.8, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-12, 14-4)

**Sec. 14-18.9 Standard details and specifications for curbs.**

All curbs shall be constructed in accordance with the Standard Details, department of public works, City and County of Honolulu, dated August, 1976, as amended, and with the applicable sections of the Standard Specifications for Public Works Construction, department of public works, City and County of Honolulu, dated May, 1975, as amended.

(Sec. 20-2.9, R.O. 1978 (1983 Ed.))

**Sec. 14-18.10 Standards and specifications for driveways.**

- (a) Standards—Where Found. All driveways shall be constructed in accordance with the applicable standard driveway apron and layout details of the Standard Details, department of public works, City and County of Honolulu, dated August, 1976, as amended, and with the applicable sections of the Standard Specifications for Public Works Construction, department of public works, City and County of Honolulu, dated May, 1975, as amended.
- (b) Nonstandard Driveway. The chief engineer may authorize the construction of driveways which do not conform to the foregoing standards where topographic or traffic conditions warrant a variance from the standards.
- (c) Nonconforming Driveway. Whenever a driveway is constructed in a location where the existing driveways are finished in conformance to standards adopted prior to approval of this section, the chief engineer may authorize the constructed driveway to be finished and scored to match the finish and scoring of the adjacent driveways.
- (d) Designation. The chief engineer is further authorized to designate the location of a driveway in an area zoned for business, industrial or hotel-apartment use.
- (e) Exemption. When an existing driveway having width or location which does not conform to the width or location prescribed in the standard driveway layout is constructed, such driveway may be constructed to its existing width and location and shall be exempted from the width and location provisions in the standard driveway layout, provided that such driveway shall be constructed to conform to the standard driveway apron details.
- (f) Filing Fee. A fee of \$200.00 shall be required for each variance application or request covered under subsections (b) and (c) above. All application fees collected shall not be refundable and shall be deposited into the highway fund.

(Sec. 20-2.10, R.O. 1978 (1983 Ed.); Am. Ord. 03-12, 14-4)

**Sec. 14-18.11 Standards and specifications for wheelchair ramps.**

Wheelchair ramps shall be constructed only at locations approved by the chief engineer and in accordance with the applicable standards in the Standard Details, department of public works, City and County of Honolulu, dated August, 1976, as amended, and with the applicable sections of the Standard Specifications for Public Works Construction, department of public works, City and County of Honolulu, dated May, 1975, as amended.

(Sec. 20-2.11, R.O. 1978 (1983 Ed.))

**Sec. 14-18.12 Ramp in gutter prohibited.**

The construction of a ramp in the gutter to permit vehicles to drive over the curb is prohibited.

(Sec. 20-2.12, R.O. 1978 (1983 Ed.))



**Sec. 14-18.13 Conversion of abandoned driveway to sidewalk.**

- (a) Conversion. The building superintendent may require the owner to convert an abandoned driveway to a sidewalk.
  - (b) Work to Be Done By City. If the owner fails to close such abandoned driveway and to convert it to a sidewalk, the building superintendent shall cause the city to perform the necessary work.
  - (c) Notice. Prior to commencement of any work, the building superintendent shall notify the owner that if such owner fails to obtain a permit to convert the abandoned driveway to a sidewalk within 20 days from the date of such notice or having obtained a permit, fails to convert such driveway to a sidewalk before the expiration of such permit, the city shall perform the necessary work and shall charge the costs thereof including the amount of the permit fee required by Section 14-18.4, to the owner.
  - (d) Lien. All costs shall be billed to such owner and shall, if not paid to the city by such owner within 30 days after such billing date, become a lien upon the subject property.
- (Sec. 20-2.13, R.O. 1978 (1983 Ed.))

**Sec. 14-18.14 Inspection and approval.**

- (a) Notice to City. The permittee shall notify the building superintendent, at least 24 hours before the permittee, the permittee's agent, contractor or subcontractor begins any work. All work authorized under the permit, including formwork and placement of reinforcement, shall be subject to inspection by the building superintendent.
  - (b) Illegal Sidewalk Construction. Any sidewalk, curb or driveway constructed without a permit or without prior notification as provided under subsection (a) of this section shall be deemed a violation of the provisions of this article. If the building superintendent finds that a sidewalk, curb or driveway does not conform to the requirements prescribed in this article, the building superintendent may require that the sidewalk, curb or driveway be removed and reconstructed and if the owner fails to remove and reconstruct as required, the city shall cause the sidewalk, curb or driveway to be reconstructed and all costs thereby incurred by the city shall be billed to such owner and shall, if not paid to the city by such owner within 30 days after such billing date, become a lien upon the subject property.
- (Sec. 20-2.14, R.O. 1978 (1983 Ed.))

**Sec. 14-18.15 Violation—Penalty.**

Any person violating any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$100.00. The continuance of any such violation after conviction shall be deemed a new offense for each day of such continuance.

(Sec. 20-2.15, R.O. 1978 (1983 Ed.))

## **Article 19. Public Utility Reserved Areas**

**Sections:**

**14-19.1 Area abutting street reserved for utilities.**

**14-19.2 Reserved area at intersections—Construction of driveways over same prohibited.**

**Sec. 14-19.1 Area abutting street reserved for utilities.**

Whenever street and curb lines are established within the city, the area of two and one-half feet immediately back of the face of the curb on both sides of the street shall be reserved for public utility pole lines and unconducted utility cables; provided, however, that nothing shall prohibit the public utilities, the department of public works, the department of wastewater management, or the board of water supply from constructing gas lines, conduits or water and sewer lines across said strip, or the construction of catch basins and sewer manholes within such reserve, or the construction by the owner of the property abutting thereon of a driveway or driveways across said reserved strip; provided further, that installation of necessary cables and lines on the public utility poles and underground conduits for transmission of television signals may be allowed within the reserved area upon the terms and conditions set forth in a written approval from the city and the joint pole committee representing the public utility companies.

(Sec. 20-3.1, R.O. 1978 (1983 Ed.); Am. Ord. 93-32)

Sec. 14-19.2 Reserved area at intersections—Construction of driveways over same prohibited.

An area two and one-half feet wide as described in Section 14-19.1, commencing at a location on the curb line tangent 15 feet before reaching the point of curb of said curb line and running thence along said curb line tangent to the point of curve of same and thence along the curb curve around to the curb line of the adjacent side of the intersecting street and ending 15 feet beyond the point of tangency, of the curb curve with said curb line, shall be reserved for the use of public utility poles and unconducted cables at intersecting streets. No driveway shall be constructed within this area notwithstanding the provisions of Section 14-19.1, except as provided in Section 14-18.10; provided, that installation of necessary cables and lines on the public utility poles and underground conduits for transmission of television signals may be allowed within the reserved area upon the terms and conditions set forth in a written approval from the city and the joint pole committee representing the public utility companies. (Sec. 20-3.2, R.O. 1978 (1983 Ed.))

## Article 20. Cleaning and Maintaining Sidewalks

### Sections:

- 14-20.1 Cleaning of sidewalks.
- 14-20.2 Procedure on owner failing to clean.
- 14-20.3 Notice to property owners.

Sec. 14-20.1 Cleaning of sidewalks.

Every property owner whose land abuts or adjoins a public street shall continually maintain, and keep clean, passable and free from weeds and noxious growths, the sidewalk and gutter area which abuts or adjoins the property owner's property; provided, however, that this requirement shall not apply where maintenance of an abutting sidewalk and gutter may be hazardous to the owner, or where a sidewalk and gutter, although abutting the owner's residential property, are so situated that there is no reasonable access from the property to the sidewalk and gutter. The term "sidewalk" as used herein, shall mean that portion of a street between a curb line or the pavement of a roadway, and the adjacent property line intended for the use of pedestrians, including any setback area acquired by the city for road widening purposes. The term "gutter" as used herein, shall mean that paved portion of a roadway immediately adjacent to the curb or that portion of a roadway in concrete and 12 to 14 inches wide immediately adjacent to the curb. (Sec. 20-4.1, R.O. 1978 (1983 Ed.))

Sec. 14-20.2 Procedure on owner failing to clean.

If any such owner or such owner's agent, which shall include but not be limited to a lessee, tenant, property manager or trustee, after receiving notice from the city, fails, within 20 days after such notice, to clean such sidewalk, or fails and neglects to keep such sidewalk clean and free from weeds and noxious growths, then and thereupon the city may proceed to clean such sidewalk, as may be reasonably required, and the cost thereof shall be charged to and against such property owner and shall be collected from such property owner or the property owner's agent, if not immediately paid, by action in the district court. (Sec. 20-4.2, R.O. 1978 (1983 Ed.))

Sec. 14-20.3 Notice to property owners.

The notice specified in Section 14-20.2 shall be sent to such property owner by mailing it to the property owner's last known address in the State of Hawaii, or to the property owner's agent at the property owner's agent's last known address. (Sec. 20-4.3, R.O. 1978 (1983 Ed.))

## Article 21. Construction of Improvements by Certain Property Owners

### Sections:

- 14-21.1 Construction of improvements required.
  - 14-21.2 Types of improvements.
  - 14-21.3 Allocation of costs.
  - 14-21.4 Failure to construct improvements.
  - 14-21.5 Exceptions.
  - 14-21.6 Assessments.
  - 14-21.7 Deferment of improvements.
  - 14-21.8 Definitions.
- Sec. 14-21.1 Construction of improvements required.

(a) The owner of real property abutting any public street who or whose lessee with the approval in writing of the owner, is issued a building permit to construct or reconstruct a building on such property, where such property is situated in an area zoned for any use other than residential or agricultural uses, shall upon the granting of such building permit construct the necessary improvements and dedicate any general plan or development plan street setback area along the street abutting the property, pursuant to the requirements of this article. Such construction of improvements and dedication of any general plan or development plan street setback area shall be substantially completed prior to the issuance of the certificate of occupancy. No temporary certificate of occupancy shall be issued prior to the beginning of such construction of improvements.

In case such building permit should be issued to a lessee, the obligation to construct the improvements shall be on both owner and lessee, but, unless otherwise agreed between owner and lessee, the obligation shall be primarily that of the lessee and, if the lessee should fail to meet the same and the obligation be met by the owner or by enforcement of the lien hereinafter provided against the property, the owner shall be entitled to recover from the lessee such expenses and damages as may be incurred or suffered by such owner in consequence of the default of the lessee.

(b) The owner of real property abutting any public street where such property is granted a zoning change from its present use classification to any use classification other than residential or agricultural uses, shall upon the granting of such zoning change, dedicate any general plan or development plan street setback area pursuant to the requirements of this article; provided, however, that this provision shall only apply to a zoning change initiated by the owner.

(Sec. 20-5.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

#### Sec. 14-21.2 Types of improvements.

(a) The improvements to be constructed under the provisions of this article shall include all sidewalks, curbs, gutters, pavement, adjustments at the property line, and adjustment or relocation of drainage, water, street lighting, sewer and other public utility lines on such owner or lessee's side of the centerline of the street. Such improvements shall be in conformity with the general plan and development plans of the city, and the installation thereof shall be in compliance with the applicable requirements of this chapter and the standards and specifications of the city; provided, that no improvement shall be constructed unless the plans and specifications therefor have been first approved by the chief planning officer, the director, or the chief engineer.

(b) Notwithstanding any provision to the contrary, no improvement shall be constructed in or along state highways without the prior approval of the director of the department of transportation of the State of Hawaii.

(Sec. 20-5.2, R.O. 1978 (1983 Ed.); Am. Ord. 93-32)

#### Sec. 14-21.3 Allocation of costs.

The property owner or lessee shall bear the entire cost of the improvements and dedicate any general plan or development plan street setback area; provided that any area dedicated under this provision may be included for computing density at any time for that parcel; and provided further, that the cost of relocating the utility lines shall be borne by the respective privately owned utilities. (Sec. 20-5.3, R.O. 1978 (1983 Ed.); Am. Ord. 91-25)

#### Sec. 14-21.4 Failure to construct improvements.

If any owner or lessee neglects or refuses to begin the construction of the improvements within one year after the granting of a building permit as in this article provided, the director or the chief engineer is authorized to cause such improvements to be constructed. The costs thereby incurred by the city shall be a lien upon the property abutting such improvements from the date of certification by the director or chief engineer of completion of such construction, and the same shall be collected from the owner of such property in the name of the city.

(Sec. 20-5.4, R.O. 1978 (1983 Ed.); Am. Ord. 93-32)

#### Sec. 14-21.5 Exceptions.

Notwithstanding the foregoing provisions, the requirements of this article shall not be applicable:

(a) Where the property in question is situated in an agricultural district established by the state land use commission but a use other than agricultural is permitted under a special use permit granted by the zoning board of appeals and approved by the state land use commission;

(b) If the property in question is part of a subdivision tract in an industrial or noxious industrial district where all lots in the tract are one acre or more in area and the land and building on all of said lots are in fact utilized for industrial or noxious industrial uses, as distinguished from business, semi-industrial or limited industrial uses;

(c) If the general plan or development plans show deletion of the street on which the property in question abuts;

(d) If, in the judgment of the chief engineer with respect to city-owned highways or of the director of the department of transportation with respect to state-owned highways, the construction of improvements which are required by this article would create, rather than alleviate, drainage or traffic problems;

(e) In the case where improvements are to be installed in or along city-owned highways, if curb grades have not

been established by the city or are not readily ascertainable by the chief engineer;

(f) In the case where improvements are to be installed in or along state-owned highways, if curb grades are not readily ascertainable by the director of the department of transportation of the State of Hawaii;

(g) In the case of the granting of a building permit for the installation of signs, demolition work, fencing or building alterations with a cumulative cost of \$100,000.00 or less, over a 12-month period, and where the alterations do not increase the floor area of the existing building(s); or

(h) In the case of the granting of a building permit for building alteration when the affected property abuts a street proposed to be improved under an improvement district as set forth in the city's six-year capital improvement program.

(Sec. 20-5.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 91-25)

#### Sec. 14-21.6 Assessments.

The construction of improvements pursuant to the provisions of this article shall not affect assessments made pursuant to Articles 17 through 22 of this chapter, except that, where sidewalks or curbs have been installed, appropriate credit therefor shall be given in the computation of the assessment against the land affected. (Sec. 20-5.6, R.O. 1978 (1983 Ed.))

#### Sec. 14-21.7 Deferment of improvements.

(a) If, in the determination of the director or chief engineer, it would be in the best interests of the city to defer the construction of improvements and dedication of general plan and development plan street setback areas specified in Section 14-21.1, based upon the timing of improvements by adjacent property owners or lessees, then the director or chief engineer shall have the authority to enter into an agreement with the property owners/lessees deferring such construction and dedication for a period not to exceed 20 years from the date of execution of the agreement. Nothing herein shall prohibit the director or chief engineer from requiring the property owners/lessees to commence construction of the required improvements at an earlier date upon reasonable notice. The executed agreement shall be duly recorded at the bureau of conveyances of the State of Hawaii, and shall be binding on all owners/lessees and their transferees and assignees.

(b) Notwithstanding any provision to the contrary, a certificate of occupancy may be issued in cases where an agreement to defer has been executed between the city and property owners/lessees.

(Added by Ord. 91-25; Am. Ord. 93-32)

#### Sec. 14-21.8 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in Articles 21 through 31 of this chapter shall be as follows:

"Chief engineer" means the director and chief engineer of the department of public works or the chief engineer's authorized representative.

"Director" means the director of the department of wastewater management or the director's authorized representative; except that in Articles 23 through 30, "director" means the director of the department of design and construction or the director of the department of planning and permitting, as appropriate.

(Added by Ord. 93-32; Am. Ord. 00-06)

### Article 22. Public Utility Facilities

#### Sections:

14-22.1 Placement of facilities underground.

14-22.2 Connection by property owners to underground public utility facilities.

14-22.3 Violation—Penalty.

14-22.4 Connection by city to underground public utility facilities.

14-22.5 Allocation of costs for underground public utility facilities in special design districts.

#### Sec. 14-22.1 Placement of facilities underground.

The public utilities companies shall place their utility lines and related facilities underground whenever the following streets are improved pursuant to the provisions of Articles 17 through 22 of this chapter: King Street, Beretania Street, Kapiolani Boulevard, Kalakaua Avenue, Ward Avenue and Keeaumoku Street. (Sec. 20-6.1, R.O. 1978 (1983 Ed.))

#### Sec. 14-22.2 Connection by property owners to underground public utility facilities.

(a) Required. Whenever any public utility company has relocated its overhead utility lines and related facilities underground in compliance with Section 14-22.1 or any general improvement district project, any property owner

or lessee whose property abuts the street in which such underground facilities are located, and who receives services from such public utility company by means of the overhead utility lines to be replaced thereby, shall provide underground lateral connection at the owner's expense, which meets the standards of such public utility company, upon receipt of notice as hereinafter provided.

(b) Notice to Connect. Upon completion of the relocation of utility lines and related facilities, the chief engineer or the director of the department of housing and community development in the case of urban renewal and rehabilitation projects, is authorized and empowered to notify the owner or lessee of such abutting property to provide lateral connection to the underground facilities at such person's own expense. Such notice shall be by certified mail, addressed to the owner or lessee at the street address of such abutting property.

(c) Form of Notice. The notice shall describe the work to be done and shall state that if the work is not commenced within 30 calendar days after notice is given and diligently prosecuted to completion without interruption, the chief engineer or director of the department of housing and community development shall provide the necessary lateral connection and the cost thereof shall be a lien on the property.

(d) Chief Engineer or Director of the Department of Housing and Community Development to Keep Record. The chief engineer or director of the department of housing and community development shall cause to be kept in such person's office a permanent record containing:

- (1) A description of each parcel of property for which notice to connect has been given;
- (2) The name of the owner or lessee;
- (3) The date on which such notice was mailed;
- (4) The charges incurred by the city in providing the necessary lateral connection and all incidental expenses in connection therewith; and
- (5) A brief summary of the work performed.

Each such entry shall be made as soon as practicable after completion of such act.

(e) Action upon Noncompliance. Upon failure, neglect or refusal of any owner or lessee so notified to commence work to provide the necessary lateral connection within 30 calendar days after notice has been given as hereinbefore provided, the chief engineer or director of the department of housing and community development is authorized and empowered to pay for providing the necessary lateral connection out of city funds or to order such work by city employees. The chief engineer or director of the department of housing and community development and their authorized representatives, including any contractor with whom they contract hereunder, and assistants, employees or agents of such contractor, are authorized to enter upon said property for the purpose of providing the necessary lateral connection described in the notice. Before the chief engineer or director of the department of housing and community development or their authorized representative or contractor arrives, any property owner or lessee may provide the necessary lateral connection at such person's own expense.

(f) Charges. When the city has provided the necessary lateral connection, the owner of such property shall be billed for the cost thereof. In the event the bill is not paid within 30 days after the mailing date of such bill, the owner shall be liable for payment of penalty at the rate of six percent per annum for each month or fraction of a month of delinquency in payment. The chief engineer or director of the department of housing and community development shall furnish the director of finance details showing the cost and expense incurred for the work, the date of work completion and such other information as may be deemed necessary to enable said director of finance to bill the property owner. The director of finance shall be responsible for the collection of the charges due the city.

(g) Mechanic's and Materialman's Lien Procedure. Any work done by the city hereunder is deemed to be done pursuant to quasi contract or constructive contract between the city and the owner. Based on the foregoing contractual relationship, if the owner fails to pay the amount duly noted on the statement filed by the director of finance, the corporation counsel may proceed to file a mechanic's and materialman's lien pursuant to the provisions of Part II of HRS Chapter 507, or any other appropriate lien procedures.

(Sec. 20-6.2, R.O. 1978 (1983 Ed.); Am. Ord. 89-60)

#### Sec. 14-22.3 Violation—Penalty.

Any property owner or lessee who fails to provide lateral connection within the prescribed period shall, upon conviction thereof, be subject to a fine not exceeding \$100.00 or imprisonment for a period not exceeding 90 days, or to both such fine and imprisonment. (Sec. 20-6.3, R.O. 1978 (1983 Ed.))

**Sec. 14-22.4 Connection by city to underground public utility facilities.**

- (a) Whenever any public utility company has relocated its overhead utility lines and related facilities underground in compliance with Section 14-22.1 or as part of any general improvement district project, the city may, in lieu of the procedures prescribed above, include the installation of the underground lateral connections within private properties, as part of a general improvement district project so as to assure the timely removal of utility poles as may remain as hazards to traffic movement and flow in the roadway constructed; provided, that in the case of a general improvement district project, the city shall include the installation of the lateral connection within private property if so requested by the property owner.
- (b) When the city undertakes the installation of the lateral connection as part of an improvement district project, the cost thereof may be added to the property owner's share of the cost of assessments and shall be payable in the same manner and at the same rate of interest, in the event where the owner elects to pay in installments, as prescribed for the payment of improvement district assessments; provided, that in the case of connections to be made on properties owned by government, and eleemosynary institution or an entity exempted by law from the payment of assessments, the costs thereof shall be assumed and paid by the affected government agency, eleemosynary institution or other entity, subject to the method and rate of payment to be hereafter established and determined by the director of finance and as may be modified by the council after the public hearing on the project.
- (c) Whenever overhead public utilities are to be undergrounded as a part of a city or state street improvement project, the city shall notify each owner abutting the street to be improved that the city shall, upon the request of the owner, install the owner's lateral connection to the utilities to be undergrounded and charge the owner for its cost. The notice shall be by certified mail and shall inform each owner:
  - (1) That the owner has 30 days from the mailing of the notice to inform the city whether the owner wishes the city to install the lateral connection;
  - (2) That the owner may pay the city in a lump sum or in up to 10 annual installments plus interest; and
  - (3) That if the owner does not request the city to install the lateral connection, nothing shall prevent the owner from doing so at the owner's expense prior to the completion of the undergrounding by the public utilities.
- (d) If the owner timely requests the city to install the lateral connection:
  - (1) The city shall make every effort to install the connections before the street improvements are completed, so as to avoid the cost of tearing up or removing those improvements when installing the lateral connections; and
  - (2) The city shall charge the owners for their respective share of the costs of the installation; provided, that nothing herein shall prevent the city or the state from providing financial assistance to fund all or a portion of the cost of the lateral connections.
- (e) If the owner has not requested the city to install the lateral connection, and the owner has not installed the connection as provided for in subsection (c)(3) of this section, the city shall install the lateral connection in accordance with Section 14-22.2 (e).
- (f) The director of finance shall notify each owner of the respective amount that the owner shall pay the city for the cost of the lateral connection. The notice shall be sent by certified mail, with a request for a return receipt, addressed to each owner at the address of the owner's property which abuts the street improvement guide.
- (g) The owner shall pay the amount charged against the owner within 30 days after the notice is sent; provided, that at the election of the owner, the amount may be paid in up to 10 annual installments plus interest. Failure to pay the whole of any cost charged to the owner within the 30-day period above shall be conclusively considered and held an election on the part of the owner to pay in installments.
- (h) If an owner has not paid for an installment or interest, or both, after due notice, the owner shall be penalized as provided in Section 14-22.2 (f). The chief engineer or the director of the department of housing and community development in the case of urban renewal and rehabilitation projects, shall provide the director of finance with the same information described in Section 14-22.2 (f), and the latter shall be responsible for collecting the charges due the city under this section.
- (i) The installation of any lateral connection by the city on behalf of an owner shall be deemed to be done pursuant to a quasi-contract or constructive contract between the city and the owner. Based on this contractual relationship, the city shall have all of the remedies set forth in Section 14-22.2 (g) if the owner fails to pay the amount duly noted on the statement filed by the director of finance.

- (j) The chief engineer, or the director of the department of housing and community development, in the case of urban renewal or rehabilitation projects, may pay for the installation of the lateral connection out of city funds or may finance the work through the issuance of bonds.
  - (k) The chief engineer, or the director of the department of housing and community development, in the case of urban renewal or rehabilitation projects, shall keep a permanent record of that information listed in Section 14-22.2 (d).
  - (l) For the purpose of subsections (c) through (k) of this section, “owner” means any person who, as an owner or lessee, resides on property that abuts a street improvement or improvement district project; provided, that the fee owner of the property shall approve the lessee’s request to the city that it install the lateral connection over the fee owner’s property.
- (Sec. 20-6.4, R.O. 1978 (1983 Ed.); Am. Ord. 89-60)

**Sec. 14-22.5 Allocation of costs for underground public utility facilities in special design districts.**

- (a) In areas where the utility companies elect to place their wires underground because of engineering and economic considerations and because of operating problems, the costs shall be allocated as follows:
    - (1) All costs of the underground utility facilities within the public right-of-way shall be borne by the respective utility company.
    - (2) No cost shall be borne by the city.
    - (3) The cost of necessary changes on private property shall be borne by the respective property owners.
  - (b) In areas other than as provided in Section 14-22.5 (a) of this article, the costs shall be allocated as follows:
    - (1) The costs of construction of an overhead system in the removal, relocation, replacement or reconstruction of the existing overhead utility facilities within the public right-of-way shall be borne entirely by the respective utility company.
    - (2) The difference of the costs of construction of an underground system and an overhead system in the removal, relocation, replacement or reconstruction of the existing overhead utility facilities within the public right-of-way shall be borne equally by the city and the respective utility company.
    - (3) The cost of engineering shall be included in the above allocation. Such engineering shall be performed by, or under the direction of, the city.
    - (4) The cost of necessary changes on private property shall be borne by the respective property owners.
  - (c) This section relating to allocation of costs for underground public utility facilities in special design districts shall not apply to improvement district projects proceeding under the provisions of Articles 23 through 30 of this chapter.
- (Sec. 20-6.5, R.O. 1978 (1983 Ed.))

**Article 23. General Provisions for Assessments**

**Sections:**

- 14-23.1 Methods.**
- 14-23.2 Sanitary sewer system.**
- 14-23.3 Parks, playgrounds and beaches.**
- 14-23.4 Definitions.**

**Sec. 14-23.1 Methods.**

- (a) Whenever in the opinion of the council it is desirable to:
  - (1) Establish, open or construct any public highway, as defined by statute, including in connection therewith the construction of a sidewalk, sanitary sewer system, storm drainage system, water system or street lighting system;
  - (2) Extend, widen, alter, grade, pave, curb, macadamize or otherwise improve, to an extent exceeding maintenance or repair thereof, the whole or any part of any existing public highway, including in connection therewith the improvement of a sidewalk, sanitary sewer system, storm drainage system, water system or street lighting system;

- (3) Improve a sanitary sewer system, storm drainage system, street lighting system or sidewalk independently of any other improvement; or
- (4) Acquire property for or improve pedestrian malls, off-street parking facilities as provided in HRS Chapter 56, parks, playgrounds or public beaches as provided in Section 14-23.3 hereof, or any other public facility or improvement, including but not limited to facilities or improvements relating to transportation, police or fire related facilities, public restrooms, public benches, public information booths, public meeting rooms, or any other structure, facility or improvement determined by the council to be a valid public purpose;

such acquisitions or improvements, when financed by assessments to benefited properties or as otherwise provided hereby, may be made under the provisions of Articles 23 through 29 of this chapter. For such purposes, the council may create, define and establish improvement districts, all according to the provisions of Articles 23 through 29 of this chapter.

The cost of any improvement includes the cost (if not assumed by the city under the discretionary power contained in Section 14-24.1) of acquiring any land therefor, whether prior to or after the commencement of the proceedings for such improvements. Such cost shall be assessed against the land specially benefited on the frontage basis, or according to the area of the land, or according to the real property tax assessment on the value of the land and improvements thereon within an improvement district, or according to any other method or basis of assessment determined by the council which correlates the benefits to the land within an improvement district to the improvements to be undertaken therein, or any combination of the aforesaid methods or basis of assessment.

Wherever the frontage or area basis of assessment is mentioned in Articles 23 through 29 of this chapter, such valuation method may be used either alone or in combination with one or more of the aforesaid methods of assessment.

The city may issue and sell bonds to provide the funds for such improvements. Bonds for an improvement initiated pursuant to Sections 14-25.1, 14-25.2 or 14-25.3 may, in the sole discretion of the council, be either:

- (1) General obligation bonds of the city (or the funds for such improvements may be provided from the capital projects fund or from both the capital projects fund and the issuance and sale of general obligation bonds); or
  - (2) Bonds secured only by such assessments as a lien upon the lands assessed.
- (b) Nothing in Articles 23 through 29 of this chapter will prevent the city from compelling abutting property owners at their own expense to construct, maintain and repair sidewalks and curbs in front of the abutting property under any other statute or ordinance.
  - (c) Nothing in Articles 23 through 29 of this chapter will prevent the city or the board of water supply from constructing, improving, maintaining and repairing any sanitary sewer system, storm drainage system, street lighting system or water system, as the case may be, as empowered by any other statute or ordinance.
  - (d) Nothing in Articles 23 through 29 of this chapter will prevent the city from making the improvements referred to in subsection (a) of this section, if property owners and the council mutually agree to share the cost of such improvements and the estimated amount of such cost to be borne by the property owners is deposited with the city prior to the award of the construction contract; provided, that the proportionate share of the cost to be borne by the property owners and the city shall be subject to revision upon the determination of the actual cost of the improvement.
  - (e) Nothing in Articles 23 through 29 of this chapter will prevent the city from constructing, solely at city expense, roadway, sidewalk, sanitary sewer system, storm drainage system, water system, street lighting system, pedestrian mall, off-street parking facility, park, playground public beach or any other public facility or improvement for which funds have been appropriated by the council for such purpose.

(Sec. 24-1.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 89-2, 90-91, 16-33)

### **Sec. 14-23.2 Sanitary sewer system.**

- (a) For the construction of sanitary sewer systems, the specially benefitted area of the lands within an improvement district shall be assessed, except as hereinafter provided, at the following rates: 25 cents per square foot for residential, agricultural, parks and recreation, preservation, public and military development planned areas; 31 cents per square foot for commercial and industrial development planned areas; and 37 cents per square foot for apartment and resort development planned areas. The balance of the cost shall be borne by the city.

- (b) Anything herein to the contrary notwithstanding, if the construction of any such sanitary sewer system is initiated pursuant to Section 14-25.2 or Section 14-25.3, the total cost of such system shall be assessed against the lands specially benefited.
- (c) In case of a sanitary sewer system proposed to be constructed or improved independently of other improvements, such improvement district may embrace two or more geographically separate or noncontiguous areas; provided, that such separate or noncontiguous areas utilize one common trunk line or interceptor sewer in the disposal of sewage from such areas.

(Sec. 24-1.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 95-17)

#### **Sec. 14-23.3 Parks, playgrounds and beaches.**

If deemed in the interests of the public, the council may establish an improvement district for the purpose of acquiring property for or constructing or improving a park, playground or public beach in conformity with the provisions of Articles 23 through 29 of this chapter. Nothing contained herein shall be construed to limit the power of the council to provide for the acquisition of property or the improvement for the same purposes without imposing assessments. (Sec. 24-1.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### **Sec. 14-23.4 Definitions.**

As used in Articles 23 through 29 of this chapter:

“Highways” means and includes streets.

“Improvements” means and includes land acquisition, betterments and initial construction.

“Lessee” means a lessee of property to be assessed who, by the express terms of the lease, must pay the kind of assessment contemplated by Articles 23 through 29 of this chapter. (Added by Ord. 90-91)

### **Article 24. Costs for Assessments**

#### **Sections:**

**14-24.1 Liability of city.**

**14-24.2 Costs of water system.**

#### **Sec. 14-24.1 Liability of city.**

- (a) Except where improvements are made pursuant to Section 14-25.2 or Section 14-25.3, the city may pay, out of any funds available for such purposes, the cost of engineering, incidentals, inspections, surveys, maps, plans, specifications, other engineering data, land acquisition, publication of notices of hearing, mailing notices to owners and lessees, services of bond counsel, printing of bonds, preparation and printing of an official statement relating to the bonds, publication and distribution of the notice of sale of bonds, execution and delivery of bonds, registrars' and paying agents' fees and expenses, other reimbursements to registrars and paying agents and publication and mailing of notices of redemption, rating agency fees, the cost of funding a debt service reserve fund for the payment of the principal of and interest on bonds, premiums for municipal bond insurance to ensure the timely payment of the principal of and interest on bonds and/or to ensure in lieu of funding a debt service reserve fund for bonds and fees for letters of credit and other credit enhancements to secure the timely payment of the principal of and interest on bonds. The city may elect to pay all or any portion of such costs and/or any other such preliminary costs out of available funds, or may assess all or any portion of such costs according to the benefits arising therefrom and in the manner provided for apportioning assessments for general improvements. Such costs, if advanced by the city, may be reimbursed to the city from the proceeds of the sale of general obligation bonds or improvement district bonds.

The city may also assume the following costs:

- (1) In the case of an improvement district which is assessed only on a frontage basis, the cost assessable against the frontage of an adjoining or cross street;

- (2) In the case of an improvement district which is assessed on an area basis or an area and frontage basis, the cost of improving the surface area common to both streets at the intersection of any cross street or one-half of the surface area opposite the intersection of any adjoining street;
  - (3) In improvement districts generally, 50 percent of the total cost of general improvements (which is the cost of the entire improvement, excluding such cost heretofore mentioned in the first sentence of this section as may be paid by the city and the cost for the sanitary sewer system and driveway aprons) upon or along all main or general thoroughfares, as hereinafter defined, and upon or along all other highways;
  - (4) In the case of an improvement district which is assessed on any other basis permitted hereunder, such common costs as the council shall determine;
  - (5) In the case of a main or general thoroughfare, the city may pay out of available funds the cost of all or any part of that portion of pavement in excess of 28 feet in width. A main or general thoroughfare within the meaning hereof is any highway as is subjected to more than ordinary traffic and travel by the general public, or which serves as a generally necessary connecting thoroughfare between substantially different or naturally separate localities or sections of the district of Honolulu, or which serves as a generally necessary connecting thoroughfare between districts of the city. Notwithstanding subdivision (3) of this subsection, in improvement districts in which more than 50 percent of the households are low-income households, the city may assume up to 75 percent of the low-income households' share of the total cost of general improvements described in that subdivision. For the purposes of this subsection, "low-income household" means a household that owns and occupies a residence in an improvement district and whose income (by family size) does not exceed 80 percent of the median income for the city, as determined by the United States Department of Housing and Urban Development; provided, that income for this purpose refers to total income as shown on the federal tax return and all nontaxable income, including but not limited to the amount of capital gains excluded from total income, alimony, support money, nontaxable strike benefits, cash public assistance and relief, the gross amount of any pension or annuity benefits received (including Railroad Retirement Act benefits and veterans' disability pensions), all payments received under the federal Social Security and state unemployment insurance laws, nontaxable interest received from the federal government or any of its instrumentalities, workers' compensation, the gross amount of "loss of time" insurance, nontaxable contributions to public or private pension, annuity or deferred compensation plans and federal cost of living allowances.
- (b) If the council determines that the interests of the city will be best served by protecting the city from claims for damages from surface waters, the council may provide for the collection and disposition of storm waters by proceeding independently of any other improvement. If the city does so, it may pay the whole or any part of the cost thereof out of available funds. In the event the city pays part of the cost of the storm drainage system, it shall assess the remaining cost according to the benefits arising therefrom and in the manner provided for apportioning assessments for general improvements. In the event the storm drainage system is included as part of general improvements, the cost thereof shall be allocated in accordance with subsection (a)(3) of this section. It shall be lawful for the city to assume and pay out of such available funds all or any part of the cost of acquiring any new land required for any improvement under Articles 23 through 29 of this chapter.
- (c) Notwithstanding subsection (a) of this section:
- (1) The city shall not bear the costs of inspections requested to be made during any hour after the normal working hours of the city in any workday, or on a Saturday, Sunday or legal holiday;
  - (2) The costs of installing the lateral connections to utilities shall be paid by the respective owners of the properties on which the lateral connections are installed.

(Sec. 24-2.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 91-23)

#### **Sec. 14-24.2 Costs of water system.**

If the improvement includes the improvement of a water system, the board of water supply may assume and pay out of its funds available for such purpose the cost of engineering, incidentals and inspection, and 50 percent of the total cost of the improvement of such water system. (Sec. 24-2.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Article 25. Procedure for Assessments

##### Sections:

- 14-25.1 Initial procedure.
- 14-25.2 Petition of owners.

- 14-25.3 Petition by all owners.
- 14-25.4 Determination by council to create, define and establish improvement district.
- 14-25.5 Compliance with general plan and development plans.
- 14-25.6 Contract—Bids—Contractor's bonds.
- 14-25.7 Water system—Inspection and use by board of water supply.
- 14-25.8 Assessment map and roll.
- 14-25.9 Informalities or mistakes in names or notices not to invalidate assessment or improvement district.

Sec. 14-25.1 Initial procedure.

(a) The council shall, by resolution, request the mayor to direct the director to investigate and prepare a preliminary report to the council which shall include:

- (1) Preliminary data concerning the highways, sanitary sewer system, storm drainage system, water system, sidewalk, street lighting system or other public facility or improvement proposed to be opened or improved;
- (2) The general character and extent of improvements proposed to be opened or improved;
- (3) Whether such improvements should be assessed on a frontage or area basis, or some other method or basis of assessment;
- (4) Whether it will be necessary to acquire any new land, the estimated cost of acquiring any such land and the proportion of such cost which should be borne by the city;
- (5) The materials recommended to meet the conditions of the improvements;
- (6) The boundaries of the improvement district to be proposed and any subdistricts or zones therein as to which different portions of the cost should be charged;
- (7) The estimated cost of the improvements;
- (8) The portions of the cost to be borne by the city; and
- (9) The portions of the cost to be specifically assessed against the land specially benefitted, with the estimated total amount of assessment to be made against each property according to the method of assessment proposed.

Further, such resolution shall request the mayor to direct the director to prepare and furnish all necessary preliminary surveys, maps, plans, drawings and other data, details and specifications for the improvements and any other matters intended to apply thereto.

(b) The preliminary report, when so furnished and filed with the council, shall also be provided to the neighborhood board or boards, if any, in the area included within the proposed improvement district, and the director, or the director's representative, shall make a presentation to the board, or boards, on the proposed improvement district.

(c) If the work proposed to be done includes the improvement of a water system or the laying or installation of conduits, pipes, hydrants or any appliance for supplying or distributing a water supply, the director shall obtain from the board of water supply preliminary plans and estimates for such proposed water system. The director shall then furnish the board of water supply with preliminary plans of the proposed improvements that will enable the board of water supply to make its plans and estimates for the proposed water system. The director shall incorporate such preliminary plans and estimates of the board of water supply in the director's preliminary report to the council.

(Sec. 24-3.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 93-32, 00-06)

Sec. 14-25.2 Petition of owners.

(a) If the owners and lessees, as specified herein, of not less than 60 percent of the frontage of a public highway to be assessed, or of not less than 60 percent of the area of land to be assessed in a proposed improvement district designated by such persons, shall file with the council a petition, duly acknowledged by such owners and lessees, requesting the improvement, through an improvement district, of a public highway, a storm drainage system, sanitary sewer system, sidewalk, water system, street lighting system or other public facility or improvement, together with the surveys, maps, plans and other preliminary data and estimates mentioned in Section 14-25.1, the council may reject or accept the petition.

If the council accepts the petition, it shall proceed thereon in the same manner as though the plan for such improvements had been initiated on its own motion. The council shall not make any change or modification of the plans, details or specifications for the proposed improvements without the written and duly acknowledged consent of the owners and lessees of not less than 60 percent of the frontage or area of the land to be assessed, except that the council may delete or modify any part of the plans which contemplates payment by the city for such part of the proposed improvements.

The cost of engineering, incidentals, inspection, surveys, maps, plans, specifications, other engineering data, land acquisition, publication of notices of hearing, mailing notices to owners and lessees, services of bond counsel, printing of bonds, bond discounts, preparation and printing of an official statement relating to the bonds,

publication and distribution of notice of sale of bonds, execution and delivery of bonds, registrars' and paying agents' fees and expenses, other reimbursements to registrars and paying agents and publication and mailing of notices of redemption rating agency fees, the cost of funding a debt service reserve fund for the payment of the principal of and interest on bonds, premiums for municipal bond insurance to insure the timely payment of the principal of and interest on bonds and/or to ensure in lieu of funding a debt service reserve for bonds and fees for letters of credit and other credit enhancements to secure the timely payment of the principal of and interest on bonds, shall be included in the cost of the improvements.

A lessee must join in the petition with the lessor unless the lessor files with the petition a duly acknowledged assumption of responsibility to pay the proposed assessments and release the lessee from payment or reimbursement to the lessor of such assessment.

No sidewalks shall be constructed independently of any other improvements under any provision of Articles 23 through 29 of this chapter unless the highway along which the construction of such sidewalk is proposed shall have existing curbing, and the right-of-way width of such highway shall be at least equal to the width, if indicated, in the general plan or development plans of the city.

(b) An improvement district under the provisions of this section may be initiated by the council on its own motion as an alternative to initiation by petition of the owners and lessees as hereinabove provided. Under this alternative method the duly acknowledged written consent of such owners and lessees of not less than 60 percent of the frontage or area of land to be assessed shall be obtained before proceeding with the improvements.

(c) No such improvements shall be approved by the council if the cost of the proposed improvements exceeds the market value of the land; provided, that the improvements may be approved by the council upon the petitioners paying in cash or by certified check the amount by which the cost of the proposed improvements exceeds the market value of the land. The payment shall be applied against the total cost of improvements. (Sec. 24-3.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-25.3 Petition by all owners.

If all the owners and lessees of 100 percent of the frontage to be assessed upon any public highway, or of 100 percent of the area of land to be assessed, such frontage or area being designated by such persons as a proposed improvement district, file a duly acknowledged petition requesting the type of improvements mentioned in Section 14-25.2, the council shall proceed in the manner specified in Section 14-25.2 and all the provisions therein shall be applicable. In interpreting such section, "100 percent" shall be substituted wherever "60 percent" appears. If such a petition is filed, it shall be unnecessary to give notice of the proposed improvements, provide the preliminary report and make a presentation to the neighborhood board or boards, as provided in Section 14-25.1(b), or call for a public hearing as provided in Section 14-25.4. If all of such owners and lessees shall file a duly acknowledged written consent to the amount and apportionment of the proposed assessments, it shall be unnecessary to give the notice or to hold the hearing specified by Section 14-26.1 and the council may immediately proceed to fix the assessments in the manner provided by Section 14-26.1.

(Sec. 24-3.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 00-06)

#### Sec. 14-25.4 Determination by council to create, define and establish improvement district.

(a) If the council determines to proceed with the improvement district, after receipt of the preliminary report, it shall by resolution:

- (1) Create, define and establish the improvement district;
- (2) Define the extent and describe the general details of the proposed improvements, including the highways, sanitary sewer system, storm drainage system, water system, sidewalk, street lighting system or other public facility or improvement to be opened or improved;
- (3) Describe each parcel of land to be acquired, including the approximate size of the parcel, the landowner(s), if known, and the location of the parcel;
- (4) Declare the estimated total cost of the improvements and the part or portion of the cost of improvements to be borne by the city;
- (5) Declare the method or basis of assessment, and the number of installment payments;
- (6) Describe the general boundaries of the district, subdistricts and zones to be assessed, determine the land to be assessed and that such property to be assessed is specially benefited, and declare the estimated total amount of assessment and the amount of assessment against each property;
- (7) Describe the materials to be used;
- (8) Request the mayor to direct the director to prepare a map of the improvement district showing the exact location of the proposed improvements together with final details, plans and specifications for the work in a form to call for and encourage competitive bidding, wherever feasible; and
- (9) Request that the director submit to the council the final report on the proposed improvement district upon its completion.

The description and definition herein required may be set forth expressly in such resolution or be

incorporated therein by referring to the data of the director theretofore filed with the council, including any plans and estimates of the board of water supply.

If the proposed improvements include the construction or improvement of a water system, the resolution shall request the board of water supply to furnish final details, plans and specifications for adequate and appropriate conduits, pipes, hydrants and other appurtenances, including reservoir and booster pumps for such water system and shall also request the mayor to direct the director to furnish the board of water supply with such copies of final surveys, maps and plans of the proposed improvements necessary for the preparation of the final plans and specifications for such water system. The board of water supply need not furnish such plans and specifications where the city has not appropriated its share of the cost. No modification in the plans and estimates furnished by the board of water supply shall be made without the board's consent. However, if the city and the board cannot agree on the board's plans and estimates, the water system, conduits, pipes, hydrants and other appurtenances for supplying and distributing water shall be omitted from the proposed improvements.

In the final report to the council as required by the resolution, the data may expressly be set forth in the report or may be incorporated therein by referring to the data theretofore filed with the council by the director and the board of water supply. The map of the improvement district showing the exact location of the proposed improvements, and the final details, plans and specifications of the director and the board of water supply shall be used as the basis for the calling for bids and awarding of contract.

(b) Before the council meeting at which the resolution to create, define and establish the improvement district is to be heard, the city clerk shall cause a notice of a public hearing to be published in the manner provided by applicable state law or, if no state law is applicable, in a newspaper of general circulation in the city. The published notice shall provide all owners and lessees of the land proposed to be assessed or acquired, and all others interested, with the general details of the proposed improvements, either by express description or by reference to the data supplied by the director and theretofore filed with the council. The notice shall also state the time and place of the public hearing, which shall be at the same council meeting at which the resolution herein described is first placed on the council's agenda for adoption; provided that the hearing shall occur before the adoption of the resolution. The notice shall also state that the persons so notified may object to and suggest modifications to the proposed improvements and may question the benefits of the proposed improvements to their property and the amount of any assessment thereon, and where the resolutions and any related reports and other data may be seen and examined prior to the hearing. Not less than 10 days before the public hearing, a notice thereof, stating the time and place of the hearing where persons may object to and suggest modifications to the proposed improvements and, where pertinent, reports and other data relating to the proposed improvement district may be obtained, shall be mailed by the city clerk to the several owners and lessees on record in the books and records of the real property tax assessment division of the department of budget and fiscal services by certified or registered mail with a request for a return receipt. Affidavits of publication and mailing shall be filed with the council at or before the hearing.

If, in a city-initiated improvement district, 100 percent of the owners and lessees of the frontage to be assessed upon any public highway, or 100 percent of the area of land to be assessed, file a duly acknowledged consent to the creating, defining and establishing of the improvement district, the public hearing and mailed notice provided for in this subsection, shall not be required.

(c) In case the improvements in the proposed improvement district require the acquisition of any new land therefor, the city shall acquire the same before final award of the contract. The acquisition shall be either by deed or other voluntary conveyance from the owners thereof, or the council may, in the name of the city, cause condemnation proceedings to be brought to acquire the same as provided by law or in like proceedings when brought by the state. After the filing of the petition in such proceedings, the final award of the contract may be made. If the cost of acquiring such land exceeds the estimate therefor, the council may provide for the excess cost by general appropriation.

(d) If:

(1) Land for improvement has been acquired by condemnation under the provisions of HRS Chapter 101, and

(2) In the award made on the condemnation there has been deducted, from the compensation or damages otherwise payable to the landowners, any amount because the land of such landowner not sought to be condemned would be benefited by the improvements,

then the deducted amount shall first be credited against such land's assessment.

(Sec. 24-3.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 93-32, 00-06)

Sec. 14-25.5 Compliance with general plan and development plans.

(a) Notwithstanding any provisions of Articles 23 through 29 of this chapter to the contrary, the actual construction of any improvement shall not be commenced unless the improvement shall conform to, or shall not be inconsistent with, the general plan and development plans of the city, the Standard Details, Department of Public Works, dated September 1984, and the Standard Specifications for Public Works Construction,

Department of Public Works, dated September 1986; provided, that the council may, by resolution, waive or modify any of the standards and specifications specified in the standard details and standard specifications in cases where compliance with them would cause an undue hardship to property owners in an improvement district. The council may waive such standards and specifications only if:

(1) The waiver of or modifications from the standards and specifications are listed in the resolution waiving or modifying them;

(2) The property owners agree in writing to indemnify and hold harmless the city from any injuries or damages arising directly or indirectly from the waiver or modifications; and

(3) The property owners agree in writing to pay all remedial costs if the waiver or modifications must be remedied in the future. The foregoing executed agreement shall be duly recorded at the bureau of conveyances and shall be binding on all owners and their transferees and assignees.

For the purposes of this section, "undue hardship" shall include but not be limited to the situation where the construction of improvements in accordance with their applicable standards and specifications would necessitate the demolition of homes.

(b) Any improvement district project involving the improvement of any highway shall include the improvement:

(1) Of any portion of a highway shown on the development plans, which is situated within the proposed improvement district and which will connect two or more highways, existing or to be constructed under the proposed improvement district, situated within such improvement district; and

(2) Of any dead end street shown on the development plans which is situated wholly within the proposed improvement district.

(Sec. 24-3.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 91-23)

#### Sec. 14-25.6 Contract—Bids—Contractor's bonds.

(a) All improvements made under the provisions of Articles 23 through 29 of this chapter shall be constructed under contract let in accordance with the Hawaii Procurement Code, HRS Chapter 103D, and related provisions of the Hawaii Administrative Rules.

(b) Notwithstanding any other law to the contrary, if the completion of the contract will extend beyond the fiscal year in which the same is executed, the contract may be let without the council appropriating the total amount the city is obliged to pay towards the contract price under the following conditions.

If the contract will be completed during the next succeeding fiscal year, the city shall have available and appropriated at the time of letting the contract at least 50 percent of the amount the city is obliged to pay toward the contract price. The balance shall be a first charge on the revenues of the city for the next succeeding fiscal year.

If the contract will be completed beyond the next succeeding fiscal year, the city must have available and appropriated at the time of letting the contract at least 33 1/3 percent of the amount the city is obliged to pay toward the contract price. The balance shall be a first charge on the revenues of each of the next two succeeding fiscal years; provided, that not less than 50 percent of the balance shall be provided at the beginning of the first succeeding fiscal year and the remainder at the beginning of the second succeeding fiscal year.

The contract shall not be legal unless:

(1) Before the contract is let, the council by resolution provides, to the extent permitted by law, for the automatic appropriation, at the beginning of the next succeeding fiscal years, of the amounts herein made a first charge on the revenues of the city for such fiscal year, and

(2) The director of finance certifies the availability of the appropriations required by the resolution.

(Sec. 24-3.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 96-58, 98-64)

#### Sec. 14-25.7 Water system—Inspection and use by board of water supply.

If an improvement or work includes the construction or improvement of a water system as aforesaid, the board of water supply shall maintain an inspector over the work to see that the plans and specifications which it has furnished have been complied with. After the work has been completed and accepted, the water system, pipes, conduits, hydrants and other appurtenances for supplying or distributing water so installed shall constitute a part of the water system of the board of water supply and shall at all times thereafter be used, operated and maintained by it as a part of its water system. (Sec. 24-3.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-25.8 Assessment map and roll.

(a) After the bid of the lowest responsive, responsible and reliable bidder has been received for the construction of the improvements, no additional public hearing, except for the hearing provided for in Section 14-26.1, shall be required if the director finds: (1) That the frontage or area to be assessed would not be substantially changed; (2) That the total amount of assessments against all properties within the improvement district, based on the bid, will not exceed by more than 10 percent the initial total assessment against all properties specified in the resolution creating, defining and establishing the improvement district; and (3) That the general character or plan of

improvements, as provided in such resolution, has not been materially altered. If any one of the three conditions set forth in this subsection occurs, the council shall hold an additional public hearing and mail a notice to the owners and lessees in the manner provided in Section 14-25.4(b). The public hearing notice and notice that is mailed shall inform the owners and lessees of the change in any of the conditions listed in this subsection.

However, one or more areas of an independent sanitary sewer improvement district embracing two or more separate areas may be deleted without an additional public hearing.

(b) The director shall thereupon proceed to prepare:

(1) An assessment map similar to that required under Section 14-25.4;

(2) An assessment roll and description of properties to be assessed, showing in detail the proportionate amount proposed to be assessed against the property in the benefitted district or in the several subdistricts or zones thereof, if any. If the assessment is to be made on a frontage basis, the roll shall show the amount per front foot and the exterior boundaries of the lands subject to the assessment. If the assessment is to be made on an area basis, the roll shall show the rate per square foot and the area of the lands subject to the assessment. If the assessment is to be made on any other basis, the roll shall contain sufficient detail such that the owners or lessees of the lands subject to the assessment may determine the proposed assessment on their respective lands; and

(3) A list of all owners and lessees on record in the books and records of the real property tax assessment division of the department of budget and fiscal services of the city of the land fronting upon such improved highways or situated within the improvement district.

(Sec. 24-3.8, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 93-32, 00-06)

Sec. 14-25.9 Informalities or mistakes in names or notices not to invalidate assessment or improvement district.

No assessment against properties in an improvement district, as fixed by ordinance in accordance with Article 26, nor the validity of any improvement district shall be invalidated: (1) on account of a mere informality; (2) if the notice of publication or notice that is mailed, pursuant to Sections 14-25.4 and 14-26.1, is in error because of a mistake in the name of an owner or lessee, or supposed owner or lessee, of the property assessed; or (3) if the public hearing required by Sections 14-25.4 and 14-26.1 is not scheduled at the same council meeting that the resolution to create, define and establish the improvement district is first scheduled for adoption, or is not scheduled at the same council meeting that the bill to impose the assessment is first scheduled for second reading. (Added by Ord. 00-06)

## Article 26. Assessments

### Sections:

14-26.1 Hearing on assessments—Assessments fixed by ordinance.

14-26.2 Notice and collection of assessments.

14-26.3 Assessments—Payable when.

14-26.4 Lien—New assessment.

14-26.5 Payment of installments.

14-26.6 Payment in bonds.

14-26.7 Effect of failure to pay installment.

14-26.8 Owner of undivided interest.

14-26.9 Sale in case of default.

14-26.10 Purchase at sale.

14-26.11 Certificate by director of finance.

14-26.12 Sale of land bid in by director of finance.

14-26.13 Eligibility of property owners of record, procedure for, and termination of, deferred payment of assessments.

14-26.14 Deferred assessments—Lien.

14-26.15 Payment of assessments upon sale.

Sec. 14-26.1 Hearing on assessments—Assessments fixed by ordinance.

(a) The council shall by advertisement and mailing in the same manner as that provided in Section 14-25.4, give notice of the total amount of the cost of the improvements based upon the bid of the lowest responsive, responsible and reliable bidder, the method or basis and the rate of assessment proposed to be charged to the benefitted district or subdistricts or zones, if any, and a statement that the assessment map, assessment roll and description of properties are available for examination at the office of the director during business hours at any time prior to and including the date fixed for hearing. The notice shall also fix a date and place for a public hearing at which the council will sit as a board of equalization to receive complaints or objections respecting the

total amounts of the proposed several assessments. Except as provided herein, the hearing shall be held at the same council meeting at which the assessment bill is first placed on the council agenda for passage on second reading, and shall be held prior to passage of the bill on second reading.

Notwithstanding any other law to the contrary, the council may give notice and hold the assessment hearing as aforesaid prior to advertising for bids on any sanitary sewer system improvements in which the total assessment is based on a rate fixed by Section 14-23.2.

If, in a city-initiated improvement district, 100 percent of the owners and lessees of the frontage to be assessed upon any public highway, or 100 percent of the area of land to be assessed, file a duly acknowledged consent to the amount and apportionment of the proposed assessments, it shall be unnecessary to give the notice or hold the public hearing required by this subsection.

(b) After the hearing required by subsection (a), the council may amend the assessments as may seem equitable or just, or shall confirm the first proposed assessments. Upon reaching a final decision, the council shall, by ordinance, fix the portions of the cost to be assessed against the benefited properties and against the owners thereof respectively, which ordinance shall incorporate by reference the assessment roll as approved by the council. After the effective date of such ordinance, the amounts of the several assessments so listed, advertised and incorporated and not previously objected to shall be conclusively presumed to be just and equitable and not in excess of the special benefits accruing or to accrue by reason of the improvement to the specific property assessed. (Sec. 24-4.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 00-06)

#### Sec. 14-26.2 Notice and collection of assessments.

The director of budget and fiscal services shall notify the several owners and lessees, on record in the books and records of the real property tax assessment division of the department of budget and fiscal services of the city, by either certified or registered mail with a request for a return receipt, of the several amounts assessed on the respective properties and of the date when such assessments are payable. Failure of any owner or lessee to receive any such notice shall not invalidate the assessment or the proceedings relating thereto, nor entitle the owner or lessee to an extension of time within which to pay the assessment. The director of budget and fiscal services shall also collect such assessment and set aside all monies so collected in an appropriate fund or funds. (Sec. 24-4.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 00-06)

#### Sec. 14-26.3 Assessments—Payable when.

(a) All assessments made pursuant to Articles 23 through 29 of this chapter shall be due and payable within 30 days after the date of the effective date of the ordinance fixing such assessments. Any assessment may, at the election of the owner of the land assessed, be paid in installments with interest, at such rate or rates, or in accordance with such method of determining the rate or rates, as may be established by the council. Failure to pay the whole of any assessment within the period of 30 days shall be conclusively considered an election on the part of all persons interested in such assessment, whether under disability or otherwise, to pay in installments.

(b) All persons so electing to pay in installments shall be conclusively considered to have consented to the improvement and the assessment therefor. Such election shall be conclusively considered as a waiver of any and all right to question all power or jurisdiction of the city to make the improvement, the regularity or the sufficiency of the proceedings or the validity or correctness of the assessment. However, such waiver shall not apply to any person who has properly filed an action in court, challenging the power or jurisdiction of the city to make the improvement within 30 days after the effective date of the ordinance fixing the assessments. (Sec. 24-4.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-26.4 Lien—New assessment.

(a) All assessments made pursuant to Articles 23 through 29 of this chapter shall be a lien until paid against each lot or parcel of land assessed from the effective date of the ordinance fixing the assessments and shall have priority over all other liens except the lien of real property taxes.

(b) If a previously assessed lot or parcel of land is subsequently subdivided or consolidated with any other lot or parcel (which need not be in the improvement district), the owners or lessees of such lots or parcels may petition the council to prorate or consolidate, as the case may be, the original assessment. Upon receiving such petition, the council may so amend the ordinance fixing the assessments. Prior to the introduction of the amendment to the ordinance fixing the assessments, the subdivider or consolidators shall deposit with the city legal tender or a certified check in a sufficient amount to be used to cover the cost of making such reallocation of assessments and to cover the assessment allocable to areas used or to be used for purposes that are public in nature, such as, but not limited to, roadways, parks, school sites, sewage treatment plant sites and reservoir sites, developed in connection with the subdivision or consolidation.

(c) The cost of making the reallocation of assessments, when determined by the director and approved by the council, shall be paid into the general fund of the city. The amount of assessment allocable to areas used or to be used for purposes that are public in nature and developed in connection with the subdivision or consolidation, as

recommended by the director and approved by the council, shall be credited to the appropriate fund.

(d) The amended assessments shall be a lien upon the subdivided or consolidated lot or parcel as of the effective date of the amended ordinance. Such assessment shall be paid in installments equal in number to that remaining under the original assessment and at the same rates of assessments and interest. The subdivider shall be responsible for notifying the city of any division of the assessed property into condominium interests.

(e) No delay, mistake, error, defect or irregularity in any act or proceeding authorized by Articles 23 through 29 of this chapter shall prejudice or invalidate any assessment; but the same may be remedied by subsequent or amended acts or proceedings and, when so remedied, the same shall take effect as of the date of the original act or proceeding. If in any court of competent jurisdiction any assessment made under Articles 23 through 29 of this chapter is set aside for irregularity in the proceedings, the council may, upon notice as required in making an original assessment, make a new assessment in accordance with the provisions of Articles 23 through 29 of this chapter.

(f) Upon completion of the improvements and the payment of the cost thereof, the director shall certify to the council the actual cost of such improvements, together with the amount of the assessments therefor. If the aggregate of the assessments for improvements made pursuant to either Section 14-25.2 or Section 14-25.3 exceeds the actual cost of the improvements by more than \$5,000.00, the council, by amendment of the ordinance fixing the assessments, may direct the director of budget and fiscal services to proportionately refund or credit the amount in excess of \$5,000.00. However, no refund or credit shall be made if the cost of effecting such refund or credit exceeds the amount of refund or credit available.

(g) If the assessment has been paid in full, then the refund of such excess shall be made to the owners or lessees of the property, as appropriate, at the time of the refund. If the assessment is still outstanding, then the refund shall be applied to reduce the unpaid principal of the assessment outstanding. If any amount of such excess, in the opinion of the director of budget and fiscal services, cannot be applied as a refund, then such excess shall be credited to the improvement district revolving fund of the city. In any case, any amount of excess up to \$5,000.00 or less shall be retained by the director of budget and fiscal services to defray the cost of effecting any refund or credit and all other costs of administering the improvement district from which such amount is generated. Any amount in excess of \$5,000.00 shall be proportionately distributed subject, however, to the limitation relative to the cost of distribution as stated hereinbefore. Any of the aforesaid excess retained to cover administrative costs shall be deposited in the general fund.

(Sec. 24-4.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 93-32, 00-06)

#### Sec. 14-26.5 Payment of installments.

(a) In case of an election to pay any assessment in installments, subject only to the limitation, if any, of the constitution of the state, the assessment shall be payable in substantially equal annual or semiannual installments of principal only, or of both principal or interest as the council shall determine. The number of such installments and period of payment and the rate of interest on unpaid installments shall be as determined by the council.

(b) The owner of any land assessed may, at any time after the expiration of the first 30-day period, pay the entire unpaid principal of assessment, or any portion of the unpaid principal, together with interest on the amount so paid to the date for the payment of the next subsequent installment, plus a prepayment premium, as established by the council, which shall not be less than the premium payable on redemption of any bonds payable or reimbursable from such assessment. Such owner shall no longer be liable for the interest which would otherwise have accrued after such date on the amount of principal so prepaid. Any prepayment of the unpaid principal of an assessment shall be applied to reduce the unpaid principal of the assessment outstanding; shall be credited against the outstanding principal installments in inverse chronological order; and shall not relieve the owner of the land assessed from the payment of the amount of the installment of principal and interest next due.

(Sec. 24-4.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 89-2, 90-91)

#### Sec. 14-26.6 Payment in bonds.

In payment of any assessment, installment thereof, interest, penalty, cost, expense or any portion thereof, the director of finance may accept, in lieu of cash, bonds of the subject improvement district issued pursuant to Section 14-27.1(a). Such bonds shall be valued in an amount equal to 100 percent of the principal amount of such bonds, plus accrued interest on such bonds to the date of acceptance of such bonds by the director of finance. Upon the receipt of such bonds, the director of finance shall forward the same to the registrar for such bonds for cancellation and credit the improvement district with the amount allowed on such bonds. (Sec. 24-4.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-26.7 Effect of failure to pay installment.

Failure to pay any installment or any part of an installment, whether of principal or interest or both, when due, shall cause the whole of the unpaid principal to become due and payable immediately. The delinquent

installment or installments or any delinquent part or parts thereof, whether of principal or interest or both, shall thereafter bear penalty at the rate of two percent per month or fraction of a month from the date of delinquency until the date of sale as hereinafter provided. However, at any time prior to the day of sale, the owner may pay the entire amount of the delinquent installment or installments or delinquent part or parts, whether of principal or interest or both, with penalty, and all costs and expenses accrued. Thereupon, such owner shall be restored to the right thereafter to pay in installments in the same manner as if default had not been made. (Sec. 24-4.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

Sec. 14-26.8 Owner of undivided interest.

The owner of any undivided interest in any land may pay the whole assessment and may have a joint or several right of action against the other owners of any interest in such land for their proportionate share of the assessment. (Sec. 24-4.8, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

Sec. 14-26.9 Sale in case of default.

In case of default in the payment when due of the principal of and interest on any installment of any assessment, the director of finance shall advertise and sell the property concerning which default is made. The sale shall be for the whole of the unpaid principal amount of the assessment thereon, interest and costs. Such sale and advertisement shall be made by the director of finance in the same manner, under the same conditions and penalties and with the same effect as provided by general law for sales of real property for default in payment of property taxes. (Sec. 24-4.9, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

Sec. 14-26.10 Purchase at sale.

At any sale for default in payment of any assessment as aforesaid, in payment for the land so sold, the director of finance may accept, in lieu of cash, bonds of the subject improvement district issued pursuant to Section 14-27.1(a). Such bonds shall be valued at an amount equal to 100 percent of the principal amount of such bonds, plus accrued interest on such bonds to date of sale. Upon the receipt of such bonds, the director of finance shall forward the same to the registrar for such bonds for cancellation and credit the improvement district with the amount allowed on such bonds. (Sec. 24-4.10, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

Sec. 14-26.11 Certificate by director of finance.

The director of finance shall, on request, give a written certificate showing the balance due on any individual assessment for improvements for principal, with the date of the next installment payment, the number of the installment payments and the amount to be due for the installment payment and particulars of interest and penalty on the next installment date to be due and owing. (Sec. 24-4.11, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

Sec. 14-26.12 Sale of land bid in by director of finance.

Whenever any land has been bid in by the director of finance at any sale for default of the owner thereof, the director of finance, in making such sale thereof as may by law be authorized, may sell the same upon the following terms and conditions:

- (a) At the time of sale, a down payment of 20 percent of the sale price shall be provided;
- (b) The balance shall be payable in monthly installments of not less than one and one-third percent of the total sale price, plus interest at the prevailing rate established by the council for payment of the unpaid balance of the property owner's share of the cost of assessments within an improvement created and established under Section 14-25.1;
- (c) Failure for 30 days to pay any installment due shall effect an entire forfeiture of the purchaser's right, title and interest in such land and in any payments previously made by the purchaser on account thereof;
- (d) Such building restrictions as the director of finance may prescribe and shall be complied with; and
- (e) Such land when sold shall be subject to real property taxes.

(Sec. 24-4.12, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

Sec. 14-26.13 Eligibility of property owners of record, procedure for, and termination of, deferred payment of assessments.

(a) Property owners of record shall be eligible to defer the payment of assessments if the following conditions are met:

- (1) The property shall be owned jointly or severally, either in fee simple or leasehold;
- (2) The owners shall be required to pay improvement district assessments on property situated within an improvement district;
- (3) The property shall serve as the only residence of one of the property owners of record who has either (A) attained the age of 65 years, or (B) is permanently and totally disabled as defined in HRS Section 235-1,

income tax law; and

(4) The owners' family residing on the property is subject to financial hardship by the assessments imposed as a result of the creation of the improvement district. Prima facie evidence of hardship shall be a showing that the average annual payment for all assessments levied against the subject property exceeds one percent of the adjusted gross income of the property owner of record residing upon the property, or that the income of the property owner of record does not exceed \$20,000.00 per year.

(b) Any property owner of record who resides upon the property may apply for deferral of assessment payments by filing a statement with the director of finance on a form to be provided by the director of finance accompanied by sufficient documentation to establish eligibility. If an application is based upon permanent and total disability, the application shall include a certification of the permanent and total disability by the applicant's physician.

The application shall be filed within 20 days after the applicant has received a notice of assessment.

The director of finance shall act upon an application within 30 days of filing by notifying the applicant of either the acceptance or rejection of the application. All notifications of rejection shall state the reasons therefor.

Upon acceptance of an application, the director of finance shall offer to enter into a contract with the applicant. This contract shall be on a form provided by the director of finance and shall obligate the city to transfer from the capital projects fund to the improvement district bond and interest redemption fund the principal and any interest due on the assessment to the applicant's property. In return, the applicant will agree to pay to the city the amount of the deferred assessment, including interest chargeable at the same rate as originally established by the council, upon the termination of the deferral.

(c) A deferral shall terminate when any of the following events occur:

(1) A participant residing upon the property terminates the deferral by giving written notice to the director of finance;

(2) A participant residing upon the property dies and there are no other participants residing upon the property at that time, in which case the amount of deferral and interest shall be a claim against the property which is the subject of the deferral;

(3) The land which is the subject of the deferral is sold, or an agreement of sale is executed, or some person other than the participant residing upon the property becomes the owner;

(4) The land which is the subject of the deferral is no longer the only dwelling of the participant residing upon the property; or

(5) The occupation of the structure on the property in the deferred assessment program is terminated for any other reason.

(Sec. 24-4.13, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 89-2, 90-91)

#### Sec. 14-26.14 Deferred assessments—Lien.

Any deferral in the payment of assessments granted under Section 14-26.13 shall be a lien as provided under Section 14-26.4, and shall be recorded with the bureau of conveyances, department of land and natural resources, State of Hawaii. (Sec. 24-4.14, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-26.15 Payment of assessments upon sale.

Any assessments made for low-income households pursuant to Section 14-24.1 (a)(5) which remain unpaid at the time of the sale of property owned by low-income households shall become immediately due and payable in full with any interest due upon the sale of the property. The original assessee shall agree in writing at the time the assessment is made to pay the outstanding assessment, plus interest due, upon the sale of the assessee's property.

(Added by Ord. 91-23)

### Article 27. Financing for Assessments

#### Sections:

14-27.1 Improvement district bonds—General obligation bonds—Capital projects funds—Advances from available funds.

14-27.2 Special funds—Payment of improvement district and certain general obligation bonds.

14-27.3 Payment of principal, premium and interest on improvement district bonds.

14-27.4 Sale of improvement district bonds—Use of proceeds.

14-27.5 Improvement district bonds not chargeable against general revenues.

#### Sec. 14-27.1 Improvement district bonds—General obligation bonds—Capital projects funds—Advances from available funds.

(a) Improvement District Bonds.

(1) In the event of an election to pay all or any part of any assessment imposed pursuant to Articles 23

through 29 of this chapter in installments, subject to subsection (b) of this section, the unpaid amount of such assessment, including without limitation the cost of land acquisition and the costs specified in Sections 14-24.1 (a) and 14-25.2 (a) and the cost of funding a debt service reserve fund for the payment of the principal of and interest on improvement district bonds, shall be obtained by the issuance of sufficient improvement district bonds of the city. However, if the aggregate of the assessment installments for all property owners in the improvement district is less than \$1,000.00 in each year, then improvement district bonds need not be issued.

(2) The improvement district bonds shall be authorized by resolution of the council. The improvement district bonds shall:

(A) Either be in coupon or registered form,

(B) Bear the name of the benefited improvement district,

(C) Be dated,

(D) Be numbered,

(E) Be in the appropriate denomination,

(F) Bear interest at such rate or rates per annum, but not more than 15 percent per annum, payable at such time or times and at such place or places,

(G) Mature at such time or times so as to cover the outstanding installment payments determined upon, pursuant to the provisions of Articles 23 through 29 of this chapter, and

(H) Be subject to call at such price or prices and upon such terms and conditions, and may be subject to tender by the holders thereof upon such terms and conditions, all as determined by resolution by the council.

The improvement district bonds shall bear the facsimile signature of the director of finance of the city and the seal of the city or a facsimile thereof, shall be attested by the facsimile signature of the mayor of the city, and shall bear a certificate of the authentication manually executed by the registrar for the improvement district bonds. No improvement district bond shall be valid or obligatory unless authenticated by the registrar. Interest coupons, if any, shall bear a facsimile signature of the director of finance of the city.

The director of finance of the city shall designate the registrar, if any, for the improvement district bonds and the place of registration and transfer of such improvement district bonds. The registrar shall maintain such books of registry as shall be required by the resolution of the council. The director of finance may serve as registrar.

(3) The improvement district bonds shall be payable only out of the monies collected on account of assessments made for the improvements for which they are issued and the city shall not otherwise guarantee payment of such bonds. Interest payments may be advanced by the director of finance out of monies available in the improvement district revolving fund.

(b) General Obligation Bonds—Capital Projects Fund.

(1) The council, in lieu of the issuance of improvement district bonds as permitted by subsection (a) of this section, may in its sole discretion issue general obligation bonds of the city, or authorize payment of the required amount from the capital projects fund of the city, or both, in order to pay the unpaid amount of any assessment required to pay the contract price of the related improvement and any other cost involved in the improvement, including without limitation the cost of land acquisition and the costs specified in Sections 14-24.1(a) and 14-25.2(a) and the cost of funding a debt service reserve fund for the payment of the principal of and interest on general obligation bonds. The council shall have power to issue general obligation bonds of the city for the purpose of establishing, maintaining or replenishing the capital projects fund. All such general obligation bonds shall be authorized, issued and sold in accordance with HRS Chapter 47, as amended.

(2) Without limiting the generality of the provisions of the foregoing sentence, the form, name, date, denomination, numbers, maximum interest rate, method of execution and all other details of such general obligation bonds shall be fixed and determined in accordance with and as provided by such chapter. No right of prior redemption need be reserved in the issuance of such bonds, nor shall either the amounts or dates of the maturities of any such bonds be required to conform in any way to the amounts and due dates of any assessments. The validity of such general obligation bonds shall not be affected in any way by any proceedings taken, contracts made, or acts performed in connection with any improvement or any assessments for such improvements.

(3) If general obligation bonds are issued as provided in this subsection (b), except as otherwise provided herein, the council may subsequently direct all monies collected on account of assessments and interest to be applied to the reimbursement of the general fund of the city for interest on and principal of such general obligation bonds. Any amounts collected which are not so directed by the council to be applied to such reimbursement, are in excess of the amounts required for such reimbursement, or are collected on account of assessments and interest for any improvement financed from the capital projects fund, shall be appropriated to and become a part of the capital projects fund.

The provisions of Section 14-27.2 (a) and Sections 14-27.3, 14-27.4 and 14-27.5 shall not apply to such general obligation bonds and shall be restricted in their application to improvement district bonds. The provisions of Article 28 of this chapter shall not apply to such general obligation bonds unless the council in its sole

discretion shall consent to the application of such provisions to such bonds. The refunding of any such general obligation bonds shall not in any way affect the payment of assessment installments and the interest thereon or the amounts and times of such payments unless such refunding is part of a plan consented to by the council and adopted under Article 28 of this chapter.

(c) Advances from Available Funds. In the event of an election to pay all or any part of any such assessment in installments, the amount required for immediate use during the period prior to the issuance of improvement district or general obligation bonds or the provision of funds from the capital projects fund, to pay the contract price of the improvements or the installments of the assessment therefor, from time to time as they fall due, may be advanced out of any available funds. In connection with any improvements financed with the proceeds of general obligation bonds of the city, proceedings for establishment of an improvement district or districts or zones therein and imposition of assessments may be undertaken at any time prior to or while such general obligation bonds are outstanding to reimburse the city for the cost of such improvements (and such related financing and administrative costs as the council shall determine).

In the event of an election to pay all or any part of such assessments in installments, improvement district bonds or general obligation bonds may be issued in accordance with Articles 23 through 29 of this chapter for the purpose of making such reimbursement, including the payment of any reasonable administrative fee or expense of the city associated with the improvements, proceedings taken under Articles 23 through 29 of this chapter or the issuance or carrying of bonds, and any reasonable fee that the city may impose for financing or refinancing said improvements from the proceeds of general obligation bonds.

(d) Term of Bonds. Except as shall be limited by the provision of the state constitution, the council may fix, or authorize the director of finance to fix, the maturity or maturities of improvement district bonds and general obligation bonds issued to finance improvements under Articles 23 through 29 of this chapter. (Sec. 24-5.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 89-2, 90-91)

#### Sec. 14-27.2 Special funds—Payment of improvement district and certain general obligation bonds.

(a) All monies collected on account of assessments and interest for any improvements after the issuance of any improvement district bonds shall be kept by the director of finance in the improvement district bond and interest redemption fund and applied solely to the payment of interest and principal of such improvement district bonds until such bonds have been paid.

If general obligation bonds are issued pursuant to Section 14-27.1 (b) to pay the cost of any improvements, or any surplus remains in the improvement district bond and interest redemption fund after the payment of improvement district bonds chargeable against such fund, or any premium is received on the sale of such improvement district bonds, all such monies collected on account of assessments and interest for any improvements or any such surplus or premium shall be credited to and become a part of a fund to be known as the “improvement district revolving fund.” However, any portion of the assessment charged as the administrative fees or expenses of the city associated with the improvements, including any fee that the city may impose for financing said improvements from the proceeds of general obligation bonds, shall be paid into the general fund.

Monies in the improvement district revolving fund shall be available to:

- (1) Make up deficiencies in the proceeds of improvement district bonds sold below par,
- (2) Cover deficiencies in interest and principal realized on account of diminishing balances of installments outstanding,
- (3) Advance interest and principal due on improvement district bonds outstanding prior to collection of annual assessments,
- (4) Reimburse the general fund for principal and interest on general obligation bonds issued for assessable public improvements or issued to establish, maintain or replenish the capital projects fund in the event the payment of assessments is late or insufficient,
- (5) Reimburse the general fund for administrative cost and expenses relating to improvement district bonds,
- (6) Pay all expenses in connection with the sale of delinquent improvement district lots, and
- (7) Pay the prices of such delinquent lots as are bid for and purchased for the city by the director of finance.

The director of finance is authorized upon such purchase to transfer the proper amounts so bid to the proper special funds for the respective improvement district concerned.

(b) Upon recommendation of the director of finance, the council may by resolution authorize the director of finance to advance monies in the improvement district revolving fund for:

- (1) Unpaid assessments for any improvements in lieu of the issuance of bonds where the aggregate of the assessment installments for all property owners in the improvement district is less than \$1,000.00 for each year,
- (2) Any unpaid amount of the first installment of the assessments where elections have been made to pay the assessments in installments, and
- (3) Any payment in connection with any improvements for which the issuance and sale of improvement district bonds or general obligation bonds or disbursement from the capital projects fund has been duly authorized.

After adoption by the council of the resolution creating, defining and establishing an improvement district pursuant to Section 14-25.4, the council, upon recommendation of the director of finance, may by resolution authorize the director of finance to advance monies in the improvement district revolving fund for the cost of land acquisition for improvements pursuant to Section 14-25.4. (Sec. 24-5.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 89-2, 90-91, 96-58)

Sec. 14-27.3 Payment of principal, premium and interest on improvement district bonds.

The principal of and premium, if any, and interest on the improvement district bonds shall be payable at such places as may be determined by resolution of the council. Interest may be payable by check or draft mailed, or wire sent, by the paying agent or paying agents for the improvement district bonds to the registered owners thereof. In all cases, the improvement district bonds and coupons, if any, shall recite the places of payment. If any improvement district bonds are made payable elsewhere than in the city, the director of finance shall remit the funds necessary to pay the interest and principal and premium thereon when due of any such improvement district bonds, with exchange, to the institution so designated after verifying that such institution is then solvent. The director of finance may serve as paying agent for improvement district bonds. (Sec. 24-5.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

Sec. 14-27.4 Sale of improvement district bonds—Use of proceeds.

(a) Improvement district bonds may be sold at public or private sale, and for a price or prices as may be determined by resolution of the council to be in the best interest of the city.

(b) If the improvement district bonds are to be sold at public sale, the director of finance shall publish and distribute a notice of sale of such improvement district bonds on an all-or-nothing basis, in accordance with the provisions hereof and the resolution authorizing the issuance and sale of such bonds.

(Sec. 24-5.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

Sec. 14-27.5 Improvement district bonds not chargeable against general revenues.

(a) No improvement district bonds issued under Articles 23 through 29 of this chapter shall be considered to be general obligation bonds of the city for purposes of and within the meaning of HRS Chapter 47, as amended, nor shall the payment of the same be a charge against the general revenues of the city.

(b) Any improvement district bonds issued under Articles 23 through 29 of this chapter shall be special obligations of the city and shall be payable solely from the monies received by the city from the payment of assessments made hereunder, the monies attributable to the proceeds of the improvement district bonds, and from the other sources specified in Articles 23 through 29 of this chapter, and shall not be payable from any other fund or source. Unless the council shall otherwise determine, the income and earnings derived from the temporary investment of the proceeds of improvement district bonds, including from any debt service reserve funds, shall be paid into the improvement district revolving fund.

(c) The improvement district bonds shall not constitute a general or moral obligation of the city and the full faith and credit of the city shall not be pledged to the payment of the principal of and premium, if any, and interest on the improvement district bonds. The improvement district bonds shall not be secured directly or indirectly by the general credit of the city or by any monies of the city other than the monies specified in Articles 23 through 29 of this chapter. No owner of any improvement district bond issued under Articles 23 through 29 of this chapter shall have the right to compel any exercise of the taxing power of such city to pay debt service on the improvement district bond.

(Sec. 24-5.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

## Article 28. Refunding

### Sections:

- 14-28.1 Authorized.
- 14-28.2 Initiation of refunding.
- 14-28.3 Protest against refunding.
- 14-28.4 Determination by council.
- 14-28.5 Improvement district refunding bonds.
- 14-28.6 Installments.
- 14-28.7 Petition by all owners.
- 14-28.8 Refunded improvement district bonds—Cancellation.
- 14-28.9 Obligations unimpaired.

Sec. 14-28.1 Authorized.

The council may provide for the refunding of the outstanding indebtedness of improvement districts located within the city, which were created according to law subsequent to December 31, 1925, in the manner hereinafter provided. Unless specified to be otherwise, as referred to in this article, outstanding indebtedness may be in the form of outstanding improvement district bonds or general obligation bonds. (Sec. 24-6.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-28.2 Initiation of refunding.

(a) (1) Subject to subsection (b) of Section 14-27.1, the owners or lessees of real property in any improvement district, whose property represents 75 percent or more of the outstanding improvement assessments at the time of the filing of the petition, may file with the council a petition setting forth the indebtedness of the improvement district requesting that the indebtedness be refunded, and stating the proposed method of refunding the outstanding indebtedness.

The council shall thereupon by resolution request the mayor to direct the director to investigate and report to the council:

- (A) The amount of unpaid assessments and the property subject to the same in the improvement district;
- (B) The detail of any delinquent assessments and of any unpaid penalties;
- (C) Whether the petitioners own real estate representing 75 percent or more of the unpaid assessments in the district;
- (D) The proposed method of reassessment of the lands subject to existing assessments;
- (E) A new assessment roll showing the proposed new assessments;
- (F) The cost of the proposed refunding; and
- (G) Other details which may be necessary to carry into effect the proposed refunding.

Such report of the director shall be filed with the council.

Within seven days after the filing of the director's report, the petitioners shall deposit with the director of budget and fiscal services a sum sufficient to meet the cost of preparing the proposed refunding plan.

(2) Thereafter, the council shall by resolution propose the adoption of the suggested refunding plan specifying the outstanding indebtedness of the improvement district, that the owners and lessees of land representing not less than 75 percent of the unpaid improvement assessments have petitioned that the outstanding indebtedness of the improvement district be refunded, the proposed refunding plan in detail, and the proposed method of reassessment, including the number of installment payments to be proposed, and the amount of assessment which may include all costs of refunding. The resolution shall refer to and incorporate by reference the assessment roll and such other data reported by the director as shall be approved by the council. The resolution shall also fix the date of a public hearing upon such plan, which date shall not be less than 15 days after the first publication of notice thereof in the manner provided by applicable state law or, if no state law is applicable, in a newspaper of general circulation in the city.

After the adoption of the resolution, the city clerk shall cause a notice to be published and mailed as provided for in Section 14-25.4 stating the time and place of the public hearing and where the resolution, assessment roll and other data may be seen and examined prior to the hearing. Affidavits of publication and mailing shall be filed with the council at or prior to the hearing.

(b) The refunding of outstanding indebtedness under this article may be initiated by the council on its own motion as an alternative to initiation by petition of the owners and lessees as provided in subsection (a) and without obtaining the prior approval of such owners and lessees. Notwithstanding that a proposed refunding of outstanding indebtedness is initiated by the council on its own motion, the report of the director required by subsection (a)(1) shall be prepared, and the public hearing required by subsection (a)(2) shall be held, in accordance with subsection (a).

In the event a proposed refunding is initiated by the council on its motion pursuant to this subsection, the new assessments approved by the council pursuant to Section 14-28.4 shall not be greater in any year than the assessments for such year in effect prior to the approval of such new assessments.

(Sec. 24-6.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 93-32, 00-06)

#### Sec. 14-28.3 Protest against refunding.

(a) Any owner of property, the assessments on which to pay the outstanding indebtedness have not been fully discharged, may, at any time prior to or at the public hearing, file in writing with the council any protest, objection or suggestion as to the proposed refunding measure, stating briefly the reason therefor, or may present the same in person orally at the public hearing. If the owners of real property representing 30 percent or more of the outstanding improvement assessments at the hearing, or prior thereto, file with the council written protests duly acknowledged by such owners against the proposed refunding plan or against any part of the plan therefor, the same shall not be made contrary to such protest. If the protest is against the adoption of any refunding plan, the same shall not be made, and the proceedings shall not be renewed within one year from the date of closing the

public hearing, unless each owner protesting shall sooner withdraw said owner's protest.

(b) Any lessee of any property to be assessed under Articles 23 through 29 of this chapter shall be subrogated to all the rights of such owner to protest by filing with the council prior to or at the hearing a certified copy of said lessee's lease, together with a citation of the book and page of the public record of the same if it be recorded. Any lessor of such lessee, or any owner of property to be assessed may, at any time before the closing of the public hearing, make void the protest or the right of protest of any lessee of the property on consideration of filing with the council a duly acknowledged waiver of the stipulation in the lease which requires the lessee to pay the special assessment, and a written agreement by the lessor or owner to pay the special assessment to be made under the proposed improvement.

(c) At the public hearing, the council shall sit as a board of equalization to receive complaints or objections respecting the total amounts of the proposed assessments.

(Sec. 24-6.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-28.4 Determination by council.

(a) After the aforesaid hearing, the council shall consider any protests or suggestions which may have been made or filed and whether sufficient valid protests have been filed to compel it to abandon the proposed refunding plan. If the council still has jurisdiction to continue, it shall then proceed to determine whether or not the refunding plan shall be adopted as proposed, or adopted with modifications. In the latter event, the city clerk shall be directed to give notice again of the hearing as provided in Section 14-28.2 (a)(2). If after such initial and further advertisement and hearing the council determines to proceed with the refunding measure, it shall by ordinance promulgate the refunding measure.

(b) Should the refunding plan provide for the issuance of new improvement district bonds or general obligation bonds, the ordinance shall approve of the assessment roll and incorporate the same by reference, which assessment roll as provided in Section 14-25.8 shall contain only the names of the property owners who have not fully paid the assessments originally provided for the payment of the outstanding improvement bonds and shall provide for the imposition of new assessments in amounts sufficient to retire the improvement district refunding bonds or the general obligation refunding bonds to be issued.

(c) On the effective date of the ordinance, the amounts of the several assessments so listed, advertised, or incorporated, not previously objected to, shall conclusively be presumed to be just and equitable and not in excess of the special benefits accruing or to accrue by reason of the original improvements. On the effective date of the ordinance as provided above, all assessments therein made shall be a lien in the same manner and to the same extent as provided in Section 14-26.4. However, in no case shall this new assessment constitute a lien on property which has been discharged from the payment of the original assessment.

(Sec. 24-6.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-28.5 Improvement district refunding bonds.

(a) Improvement district refunding bonds issued for the refunding of the outstanding improvement district bonds of any improvement district shall bear the name of the improvement district for which they are issued, shall be in the form and issued and sold and subject to call and under all the other conditions and terms as prescribed by Sections 14-27.1 to 14-27.5, except as otherwise prescribed in Articles 23 through 29 of this chapter.

(b) A lower rate of interest than that authorized in the original issue of improvement district bonds may be prescribed and the improvement district refunding bonds may be authorized to run for a term not to exceed 30 years subsequent to the final stated maturity of the improvement district bonds being refunded.

(c) General obligation refunding bonds issued for the refunding of outstanding general obligation bonds issued to finance improvements within an improvement district shall be authorized, issued and sold in accordance with HRS Chapter 47, as amended. Such general obligation refunding bonds may be authorized to run for a term not to exceed 25 years subsequent to the final stated maturity of the general obligation bonds being refunded.

(Sec. 24-6.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-28.6 Installments.

The provisions of Sections 14-26.5 to 14-26.7, relating respectively to the payment of the assessments in installments and the effect of failure to pay installments, are incorporated in Sections 14-28.1 to 14-28.9 by reference. The maximum number of installments in which the assessment as provided for in Sections 14-28.1 to 14-28.9 may be paid shall be dependent upon the term of the improvement district refunding bonds or the general obligation refunding bonds. (Sec. 24-6.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-28.7 Petition by all owners.

(a) If the petition requesting refunding of outstanding indebtedness is filed and acknowledged by the owners of land representing 100 percent of the unpaid assessments in any improvement district, and by all lessees of any property to be assessed (unless the lessor of such lease files with the petition a duly acknowledged waiver of the

stipulation in the lease which requires the lessee to pay such special assessments, and also a written agreement by the lessor or owner to pay the assessments to be made under the proposed refunding plan), then the council, upon the payment by the petitioners to the director of finance of the cost of preparing the proposed refunding plan, as estimated by the director or chief engineer, shall proceed as provided above to have a hearing on the proposed new method of assessment and the assessment roll.

(b) If the owners of 100 percent of land as aforesaid, consent, in writing, to the amount and apportionment of the proposed assessments under the refunding plan, it shall be unnecessary to give the notice or to hold any of the hearings specified above and the council may immediately proceed to fix the assessment in the manner provided. (Sec. 24-6.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91, 93-32)

#### Sec. 14-28.8 Refunded improvement district bonds—Cancellation.

Upon payment and retirement of the outstanding bonds of the improvement district, the refunded improvement district bonds shall be forwarded to the registrar for cancellation. (Sec. 24-6.8, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

#### Sec. 14-28.9 Obligations unimpaired.

Nothing in Sections 14-28.1 to 14-28.8 shall be construed as giving the council or any improvement district authority to impair the obligations of the improvement district under any outstanding improvement district bonds. (Sec. 24-6.9, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

### Article 29. Limitation on Time to Sue

#### Sections:

14-29.1 Limitation on time to sue.

#### Sec. 14-29.1 Limitation on time to sue.

No action or proceeding to review any acts or proceedings or to question the validity or enjoin the performance of any act or the issue or payment of any improvement district bonds, or the imposition or collection of any assessments authorized by Articles 23 through 29 of this chapter, or for any other relief against any acts or proceedings, done or had under Articles 23 through 29 of this chapter, whether based upon irregularities or jurisdictional defects or otherwise, shall be maintained unless begun within 30 days after the performance of the act or the passage of the resolution or ordinance challenged. (Sec. 24-7.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

### Article 30. Severability

#### Sections:

14-30.1 Severability.

#### Sec. 14-30.1 Severability.

If any provision of Articles 23 through 29 of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of Articles 23 through 29 of this chapter are declared to be severable. (Sec. 24-8.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 90-91)

### Article 31. General Provisions for Maintenance by Assessments

#### Sections:

- 14-31.1 Method.
- 14-31.2 Procedure.
- 14-31.3 Protests—Objections—Suggestions.
- 14-31.4 Determination by council.
- 14-31.5 Assessment—Lien against property.
- 14-31.6 Collection of assessments.
- 14-31.7 Payment of installment.
- 14-31.8 Financing.

- 14-31.9 Levy of annual assessments.
- 14-31.10 Exemption.
- 14-31.11 Termination of maintenance district.
- 14-31.12 Limitation on time to sue.
- 14-31.13 Severability.

Sec. 14-31.1 Method.

- (a) Upon request by the council, administration or owners of property to be benefited that a special maintenance district be created, the chief engineer shall fully consider such a proposal.
  - (b) Whenever the chief engineer finds that the cleaning and maintenance of specially improved sidewalks and streets, as defined in Section 29-1.1, and malls, as defined in Section 29-10.2, or any public open space, require effort exceeding such that which the normal city services can provide, the cost of such maintenance shall be assessed against the land specially benefited, either on the frontage basis or according to area of land or building floor area or real property tax assessment on the value of the land and improvements thereon within a maintenance district or any combination of the aforesaid methods of assessment; provided, that whenever assessment basis is mentioned in sections and provisions contained in this article, the same valuation method shall be used.
  - (c) The owners of the lands specially benefited by any proposed assessments for the maintenance of a sidewalk, street or mall or such open space may establish a committee to represent the landowners which, if so established, shall constitute an advisory committee to the city with respect to all matters relating to the proposed assessments for that district, including but not limited to matters relating to the estimated cost of maintenance for the assessment year, the scope and the specifications for and performance standards contained in any maintenance contract to be let by the city for the district, and the renewal of any maintenance contracts for the district.
  - (d) The maintenance contract for a district may include the maintenance and management of operations of said district when the council, in consultation with the advisory committee, finds that it is to the benefit of said district to so contract.
  - (e) Nothing in this article shall prevent the city from accepting a proposal from the owners that such maintenance shall be achieved under a private agreement. Such proposal shall meet the maintenance standard to be adopted for the maintenance district.
  - (f) Notwithstanding the provisions of Articles 23 through 31 of this chapter, the provisions of Chapter 14, Article 20, shall apply to property which may be affected by this chapter to the extent that the responsibility for cleaning and maintaining of sidewalks has not been assumed by the maintenance district.
- (Added by Ord. 88-97; Am. Ord. 96-58)

Sec. 14-31.2 Procedure.

- (a) The chief engineer shall prepare a resolution, requiring one reading for its adoption, defining the boundaries of the maintenance district, scope of work to be performed concerning such maintenance, which may include but not be limited to the repair, removal or replacement of any part of the improvement; the estimated cost of maintenance for the assessment year which shall be for a period of 12 months commencing on the date when the assessment is due; the method of assessment; and the portions of cost to be specifically benefited, with the estimated total amount of assessment to be made against each property according to the method of assessment proposed; the necessary surveys, maps, plans, drawings and other data; details for the maintenance; the comments and recommendations of the advisory committee with respect to such report; and any other matters or details intended to apply thereto. The resolution shall also fix the date for a public hearing upon the proposed maintenance district. Such resolution shall be submitted to the council for action.
  - (b) The city clerk shall cause a notice of the public hearing to be published twice a week for two consecutive weeks (four publications in all) in a newspaper of general circulation in the City and County of Honolulu, giving notice generally to all owners and lessees of land proposed to be assessed and to all others interested in the general details of the proposed maintenance district as adopted by the council, either by expressed description or by reference to data supplied by the chief engineer and stating the time and place of the public hearing wherein such persons may object to and suggest modifications to the proposed maintenance district and may question the benefits of the proposed maintenance district to their property and the amount of any assessment thereon, and where the resolution and other data may be seen and examined prior to the hearing. Not less than 10 days before the public hearing, a notice thereof, stating the time and place of the hearing where persons may object to and suggest modifications to the proposed maintenance district and where pertinent data relating to the proposed maintenance district may be obtained, shall be mailed to the several owners and lessees on record at the department of finance, to their addresses on record at said department, by certified or registered mail with a request for a return receipt. Affidavits of publication and mailing shall be filed with the council at or before the hearing.
- (Added by Ord. 88-97)

Sec. 14-31.3 Protests—Objections—Suggestions.

Any owner of property proposed to be assessed may at any time prior to or at the public hearing file in writing with the council any protest, objection or suggestion as to the proposed maintenance district, stating briefly the reason therefor, or present the same in person, orally, at the public hearing. If owners representing 55 percent of the total assessment value, at the hearing or prior thereto, file with the council written protests, duly acknowledged by such owners, against the proposed maintenance district, the same shall not be made unless by a two-thirds vote of all members of the council. If the protest against the proposed maintenance district is sustained, the same shall not be made, and the proceedings shall not be renewed within six months from the date of closing of the public hearing, unless each and every owner protesting shall sooner withdraw the protest. (Added by Ord. 88-97)

Sec. 14-31.4 Determination by council.

After the hearing provided in Section 14-31.2, the council shall determine whether or not the proposed maintenance district shall be created and whether it shall be created with or without modification. No modification shall be made without public hearing as provided for in Section 14-31.2, which would substantially reduce the properties to be assessed or increase the proposed assessment beyond 10 percent of the estimated total amount of assessment against all properties as specified in the resolution proposing the maintenance district, or materially alter the general character or plan of maintenance advertised. If, after such initial or further hearing, the council determines to proceed with the maintenance district, it shall adopt the resolution creating, defining and establishing the maintenance district, approving the method of assessment and confirming the amount of assessment. (Added by Ord. 88-97)

Sec. 14-31.5 Assessment—Lien against property.

Each assessment shall be a lien upon the land against which it is made, paramount to all other liens, except liens for prior assessments and property taxes, including late charges, if any, or by redemption of the land after sale for delinquency. (Added by Ord. 88-97)

Sec. 14-31.6 Collection of assessments.

After the enactment of the assessment resolution, the director of finance shall promptly mail out notices of assessment to the owners of the assessed properties. All assessments so made shall be due and payable within 30 days after the date of the notice; provided, that any assessment may, at the election of the owner of the land assessed, be paid in semi-annual installments with interest, as hereinafter provided. Failure to pay the amount assessed when due shall thereafter bear penalty at the rate of two percent per month or fraction of a month from the date of delinquency until such time when the assessment, together with penalty, has been paid in full. (Added by Ord. 88-97)

Sec. 14-31.7 Payment of installment.

In case of an election to pay an assessment in installments made pursuant to Section 14-31.6, payment shall be made within 30 days of the date of notice of payment. Interest shall be paid on the unpaid principal at a rate not exceeding 10 percent per annum. The rate of interest shall be determined by the council. (Added by Ord. 88-97)

Sec. 14-31.8 Financing.

(a) Upon receipt of monies representing assessments collected for the maintenance district, the director of finance shall deposit the monies in a special fund for the maintenance district for which they were collected, and the monies shall be expended only for the maintenance authorized for such district.

- (b) If there is a surplus or a deficit in the special fund of a maintenance district at the end of any assessment year, the surplus or deficit shall be carried forward to the next annual assessment to be levied within such district and applied as a credit or a debit, as the case may be, against such assessment.
- (c) If there is a deficit in the special fund of a maintenance district during any assessment year, the council, by resolution requiring not more than one reading for its adoption, from any available and unencumbered funds, may provide for:
  - (1) A contribution to the special fund;
  - (2) A temporary advance to the special fund and direct that the advance be repaid from the next annual assessment levied and collected within the maintenance district.

(Added by Ord. 88-97)

**Sec. 14-31.9 Levy of annual assessments.**

- (a) At least 90 days prior to the end of the preceding assessment year, the chief engineer shall prepare and submit a report to the council for the next assessment year. The report shall include the anticipated surplus or deficit from the preceding assessment year as well as the proposed new rate of assessment.
- (b) If the proposed assessment does not exceed 10 percent of the preceding year's total amount of assessment against all properties in the district, the new assessment shall take effect upon the new assessment year.
- (c) If the proposed assessment exceeds 10 percent of the preceding year's total amount of assessment against all properties in the district, the council shall review comments and recommendations of the advisory committee and conduct a public hearing as provided for in Section 14-31.4 on the issue of the assessment only. Thereafter, the council shall adopt by resolution the new rate of assessment as determined from the outcome of the public hearing.

(Added by Ord. 88-97)

**Sec. 14-31.10 Exemption.**

Exemption from improvement assessments as provided in HRS Section 46-74.1 shall apply to maintenance assessment.

(Added by Ord. 88-97)

**Sec. 14-31.11 Termination of maintenance district.**

- (a) Owners representing 55 percent of the total assessment value may petition the council for termination of a maintenance district at the end of the term of a maintenance contract for the maintenance of such district.
- (b) When such a petition is before the council, the continuation of the maintenance district shall require two-thirds vote of all members of the council to reject the petition.

(Added by Ord. 88-97)

**Sec. 14-31.12 Limitation on time to sue.**

No action or proceeding to review any acts or proceedings or to question the validity or enjoin the performance of any act or the levy or collection of any assessments authorized by this article, or for any other relief against any acts or proceedings done or had under this article, whether based upon irregularities or jurisdictional defects or otherwise, shall be maintained unless begun within 30 days after performance of the act or the passage of the resolution or ordinance complained of.

(Added by Ord. 88-97)

**Sec. 14-31.13 Severability.**

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of the article are declared to be severable.

(Added by Ord. 88-97)

## Article 32. Maintenance of Private Streets and Roads

### Sections:

- 14-32.1 Definitions.**
- 14-32.2 Surface maintenance.**
- 14-32.3 Street lighting.**
- 14-32.4 Rule-making authority.**

### Sec. 14-32.1 Definitions.

As used in this article:

“Director and chief engineer” means the director and chief engineer of the department of public works.

“Persons having the right to control the use” means the person or persons having the legal right to make decisions as to the use, improvement, and repair and maintenance of a street, road or other property, sign agreements with respect thereto, and bind all other persons having rights in or to such street, road or other property, whether such other persons are owners of the fee title to the street, road or other property, are holders of roadway easements, or have some other interest in the street, road, or other property.

“Private, nondedicated and nonsurrendered streets and roads” means streets, roads, highways, ways or lanes used for purposes of vehicular traffic which are owned, in whole or in part, by persons other than governmental entities and which have not been dedicated or surrendered to the city in accordance with HRS Section 264-1(c)(1) and (2). The term “private, nondedicated and nonsurrendered streets and roads” includes any associated bridges and bicycle lanes as the latter term is defined in HRS Section 291C-1, but does not include any trail or other nonvehicular right-of-way or any alley or bicycle path as those terms are defined in HRS Section 291C-1.

(Added by Ord. 96-73)

### Sec. 14-32.2 Surface maintenance.

- (a) Subject to the availability of appropriations, the department of facility maintenance may maintain by either remedial patching, resurfacing, or paving those portions of private, nondedicated and nonsurrendered streets and roads that have been determined by the chief engineer of the department of facility maintenance, with the approval of the director of the department of transportation services and the director of the department of planning and permitting, to meet the following criteria:
- (1) The street or road has not been dedicated or surrendered to the city or any other governmental entity, and is not otherwise owned by the city or any other governmental entity;
  - (2) The street or road is not maintained by any governmental entity other than the city pursuant to this article;
  - (3) The street or road is open to, serves, and benefits the general public;
  - (4) The street or road is not signed, marked, delineated, fenced, barricaded, or otherwise designed, constructed or operated to exclude access by the general public, in whole or in part, which may be through such means as signs indicating that the street or road is a “private” street or road, or any restrictions on parking that are not applicable to all persons except as otherwise provided by law;
  - (5) The street or road directly serves:
    - (A) Six or more parcels;
    - (B) Six or more residential structures; or
    - (C) A parcel of land which has one or more condominium buildings or apartment buildings that contain six or more condominium or apartment units;
  - (6) The street or road is not part of a cluster housing development, planned development, or similar type of development;
  - (7) Maintenance of the street or road by the city will be practicable and safe;
  - (8) The street or road is not a private street or road within the meaning of Chapter 22 or the rules adopted pursuant thereto;
  - (9) The developer or subdivider of the street or road has not agreed to maintain the street or road in perpetuity;
  - (10) An association of apartment owners or homeowners association does not maintain the street or road;
  - (11) Maintenance of the street or road surface is necessary to protect the safety of motorists, bicyclists, and pedestrians or is otherwise in the public interest; and
  - (12) The street or road does not suffer such design defects as to make use of the street or road hazardous to the general public.



If they wish a private street or road to be maintained by the city, the persons collectively owning a 60 percent or greater interest in the fee title or an appropriate roadway easement in the street or road may initiate and submit a written request to the chief engineer of the department of facility maintenance for the maintenance of the street or road. If the chief engineer of the department of facility maintenance determines that the private street or road satisfies the criteria set forth in this subsection, the chief engineer of the department of facility maintenance may, subject to the availability of appropriations, proceed to maintain the street or road, provided that the persons having the right to control the use of the street or road submit their written approval of the maintenance work. The persons having the right to control the use of the street or road must agree to such terms, conditions and covenants as may be determined by the chief engineer of the department of facility maintenance to be for the convenience and protection of the city and the public, including the granting of necessary easements; provided that two of the conditions the persons having the right to control the use of the street or road must agree to are that they shall, for as long as the city maintains the street or road surface or for the period of time specified in the agreement, whichever is longer, (i) keep the street or road open to the general public, and (ii) keep the street or road, and any adjacent sidewalk areas, free of obstructions and clear of debris that would prevent the safe passage of motorists, bicyclists, and pedestrians. The requirement for a written request, approval and agreement will not apply, however, to (i) a street or road over which the department of facility maintenance exercises surface maintenance responsibilities on the day prior to December 19, 1996, or (ii) a street or road which the chief engineer of the department of facility maintenance, with the approval of the director of the department of transportation services and the director of the department of planning and permitting, determines has been dedicated by implication to public use for roadway purposes; provided that nothing contained herein will be construed as prohibiting the chief engineer of the department of facility maintenance from requiring a written approval and agreement for new maintenance work on streets or roads over which the department of facility maintenance exercises surface maintenance responsibilities on the day prior to December 19, 1996 if the chief engineer of the department of facility maintenance determines that such an agreement is in the best interests of the city.

- (b) Paved roads shall be maintained by remedial patching. Remedial patching shall be with like materials, for example: (i) asphalt concrete shall be used for asphalt concrete paved roads, and (ii) Portland cement concrete or asphalt concrete, as determined by the director and chief engineer, shall be used for Portland cement concrete paved roads. If the director and chief engineer determines that the pavement is in such poor condition that remedial patching is impractical and not cost effective, resurfacing may be provided. Unpaved roads shall be maintained by remedial patching. Remedial patching shall be with like materials, for example: (i) coral for coral, and (ii) crushed rock for crushed rock. If the director and chief engineer determines that the street or road surface is in such poor condition that remedial patching is not cost effective and does not serve the best interests of motorists, bicyclists, and pedestrians, paving with asphalt concrete material may be provided.

The decks of bridges associated with private, nondedicated, and nonsurrendered streets and roads may be maintained by remedial repairs. Remedial repairs shall be with like materials, for example, deteriorated wood planks shall be replaced with wood planks. If the director and chief engineer determines that the deck is in such poor condition that remedial repairs are impractical and not cost effective, the deck may be replaced with like material. The director and chief engineer may also provide for the maintenance, repair, or replacement of railings.

Maintenance work to be performed by the city pursuant to this section shall not include installation or maintenance of curbs, shoulders, gutters, drainage facilities, or similar infrastructure; provided that antispeed bumps that are removed as part of the city's maintenance of private streets and roads may be reinstalled by the city if the department of transportation services determines that the conditions for installation in Section 15-24.18 have been met. Prior to the removal of anti-speed bumps as part of the city's maintenance of private streets and roads, the director and chief engineer must notify persons residing within the immediate vicinity and persons having the right to control the use of the portion of the private street or road on which the anti-speed bumps are located of the removal of the anti-speed bumps and explain in writing to such persons conditions under which the city may reinstall the anti-speed bumps. For the purposes of this section only, "anti-speed bump" means a convex mound, approximately three feet wide at the base and approximately four inches in height at the apex, placed across the width of a private, nondedicated, and nonsurrendered street or road for the purpose of controlling the speed of vehicular traffic.

- (c) The director and chief engineer, with the approval of the director of the department of transportation services, shall discontinue maintenance of specific private, nondedicated and nonsurrendered streets and roads, when the director and chief engineer determines that such streets and roads no longer meet all criteria set forth in



subdivisions (1) through (12) of subsection (a), or when requested in writing by the persons having the right to control the use of the street or road. Prior to discontinuing maintenance of any private, nondedicated and nonsurrendered street or road, the director and chief engineer shall provide each owner and roadway easement holder of record of the street or road with thirty days' written notice of such proposed action. Where maintenance is discontinued because the street or road is signed, marked, delineated, fenced, barricaded, or otherwise designed, constructed, or operated to exclude the general public, in whole or in part, the director and chief engineer is authorized, in the director and chief engineer's discretion and to the extent legally and economically feasible, to:

- (1) Recover removable fixtures or materials, if any, installed by the city, and to recover from the owners or roadway easement holders of the street or road, as may be appropriate, the value of the fixtures or materials left in place; and
  - (2) Recover from the owners or roadway easement holders the total cost incurred by the city for paving or other maintenance work done pursuant to this section within the five-year period preceding the closure of the street or road to the public. The owners or roadway easement holders of the street or road may avoid liability for the costs by making signage, design, construction, operational, or other changes, or any necessary combination thereof, to again open the street or road to the general public and meet all criteria set forth in subdivisions (1) through (12) of subsection (a).
- (d) Nothing contained in this section and no action undertaken pursuant to this section shall be construed as adoption, acceptance or approval of a private, nondedicated and nonsurrendered street or road as a public highway.

(Added by Ord. 96-73; Am. Ord. 14-37, 16-24, 17-8, 18-45)

### **Sec. 14-32.3 Street lighting.**

- (a) Subject to the availability of appropriations, the department of transportation services may install and maintain new street lights or maintain existing street lights on those portions of private, nondedicated and nonsurrendered streets and roads which have been determined by the director of the department of transportation services, with the approval of the director and chief engineer and the director of the department of land utilization, to meet the criteria set forth in subdivisions (1) through (11) of Section 14-32.2(a) and, with respect to existing street lighting systems, to meet the city's then current standards for design, construction, installation, equipment and materials.

Prior to the city undertaking any street lighting work or assuming any energy costs, all of the persons having the right to control the use of the portion of the street or road and any other property on which the street lights are or will be located, shall initiate and submit a written request to the director of the department of transportation services for the installation and/or maintenance of street lights, agreeing to such terms, conditions and covenants as may be determined by the director of the department of transportation services to be for the convenience and protection of the city and the public, including the granting of necessary easements; provided that one of the conditions the persons having the right to control the use of the portion of the street or road and any other property shall agree to is the condition that they keep the street or road open to the general public for as long as the city maintains the street lights on the street or road or for the period of time specified in the agreement, whichever is longer. The requirement for a written request and agreement shall not apply, however, to a (i) street or road over which the department of transportation services exercises street lighting maintenance responsibilities on the day prior to the effective date of this article, or (ii) a street or road which the director of transportation services, with the approval of the director and chief engineer and the director of the department of land utilization, determines has been dedicated by implication to public use for roadway purposes; provided that nothing contained herein shall be construed as prohibiting the director of transportation services from requiring a written agreement for new maintenance work on streets or roads over which the department of transportation services exercises street lighting maintenance responsibilities on the day prior to the effective date of this article if the director of transportation services determines that such an agreement is in the best interests of the city.

- (b) Maintenance work to be performed by the city pursuant to this section shall include, but not be limited to, replacing and upgrading street light fixtures, photoelectric cells, and bulbs as necessary and paying energy costs applicable to such street lights.
- (c) The director of the department of transportation services, with the approval of the director and chief engineer, shall discontinue maintenance of street lighting systems for specific private, nondedicated and nonsurrendered streets and roads, including the payment of energy costs, when the director of the department of transportation services determines that such streets and roads no longer meet the criteria referred to in subsection (a), or when requested in writing by the persons having the right to control the use of the portion of



the street or road or of the other property on which the street lights are located. Prior to discontinuing maintenance of street lighting systems or payment of energy costs for any private, nondedicated and nonsurrendered street or road, the director of the department of transportation services shall provide each owner and roadway easement holder of record of the street, road, or property with thirty days' written notice of such proposed action. Where maintenance is discontinued because the street or road is signed, marked, delineated, fenced, barricaded, or otherwise designed, constructed or operated to exclude the general public, in whole or in part, the director of transportation services is authorized, in the director's discretion and to the extent legally and economically feasible, to recover any removable standards, fixtures, photoelectric cells, or bulbs installed by the city, or to recover from the owners or roadway easement holders of the street, road, or other property, as may be appropriate, the value of the standards, fixtures, photoelectric cells, or bulbs left in place.

- (d) Nothing contained in this section and no action undertaken pursuant to this section shall be construed as adoption, acceptance or approval of a private, nondedicated and nonsurrendered street or road as a public highway.

(Added by Ord. 96-73)

#### **Sec. 14-32.4 Rule-making authority.**

In accordance with HRS Chapter 91, the director and chief engineer and director of transportation services may adopt rules having the force and effect of law for the implementation, administration and enforcement of Sections 14-32.2 and 14-32.3, respectively.

(Added by Ord. 96-73)

### **Article 33. Complete Streets**

#### **Sections:**

- 14-33.1 Definitions.**
- 14-33.2 Complete streets policy; principles.**
- 14-33.3 Administration; implementation.**
- 14-33.4 Exceptions.**
- 14-33.5 Annual report; performance standards.**
- 14-33.6 Training.**

#### **Sec. 14-33.1 Definitions.**

As used in this article:

“Accessibility” means the ability to reach desired destinations for all transportation system users.

“Complete streets features” include, but are not limited to, sidewalks, crosswalks, accessible curb ramps, curb extensions, raised medians, refuge islands, roundabouts or mini-circles, traffic signals and accessible pedestrian signals such as audible and vibrotactile indications and pedestrian countdown signals, shared-use paths, bicycle lanes, paved shoulders, street trees, planting strips, signs, pavement markings including multi-modal pavement striping, street furniture, bicycle parking facilities, public transportation stops, and facilities including streetscapes, dedicated transit lanes, and transit priority signalization.

“Context sensitive solution” means a process in which a full range of stakeholders are involved in developing complete streets transportation solutions that identify and incorporate appropriate complete streets features designed to fit into, enhance, and support the surrounding environment and context, including land use.

“Directors” means the directors of the departments of transportation services, design and construction, planning and permitting, and facilities maintenance.

“Multi-modal” means the movement of people and goods by more than one method of transportation. A street that accommodates walking, bicycling, mobility devices, transit and driving is multi-modal.

“National industry best practices” means guidelines established by national industry groups on complete streets best policy and implementation practices, including, but not limited to reports by the American Planning Association and the National Complete Streets Coalition.

“Transportation facility or project” means the planning, design, construction, reconstruction, maintenance or improvement of public highways, roadways, streets, sidewalks, traffic control devices and signage, and all facilities or improvements related to public transit.

“Users” mean motorists, bicyclists, individuals dependent on mobility devices, transit riders, pedestrians, and others who depend on the transportation system to move people and goods.

(Added by Ord. 12-15)

**Sec. 14-33.2 Complete streets policy; principles.**

- (a) There is hereby established a complete streets policy and principles for the City and County of Honolulu to guide and direct more comprehensive and balanced planning, design, and construction of city transportation systems. Under this policy, the city hereby expresses its commitment to encourage the development of transportation facilities or projects that are planned, designed, operated, and maintained to provide safe mobility for all users. Every transportation facility or project, whether new construction, reconstruction, or maintenance, provides the opportunity to implement complete streets policy and principles. This policy provides that a context sensitive solution process and multi-modal approach be considered in all planning documents and for the development of all city transportation facilities and projects.
- (b) Complete streets principles consist of the following objectives:
- (1) Improve safety;
  - (2) Apply a context sensitive solution process that integrates community context and the surrounding environment, including land use;
  - (3) Protect and promote accessibility and mobility for all;
  - (4) Balance the needs and comfort of all modes and users;
  - (5) Encourage consistent use of national industry best practice guidelines to select complete streets design elements;
  - (6) Improve energy efficiency in travel and mitigate vehicle emissions by providing non-motorized transportation options;
  - (7) Encourage opportunities for physical activity and recognize the health benefits of an active lifestyle;
  - (8) Recognize complete streets as a long-term investment that can save money over time;
  - (9) Build partnerships with stakeholders and organizations statewide; and
  - (10) Incorporate trees and landscaping as integral components of complete streets.

(Added by Ord. 12-15)

**Sec. 14-33.3 Administration; implementation.**

- (a) The directors shall, based on a context sensitive solution process, employ a multi-modal approach and incorporate complete streets features in the planning, design, construction, maintenance and operation of transportation facilities and projects, including, but not limited to, the reconstruction, rehabilitation or resurfacing of any transportation facility under the jurisdiction of the directors.
- (b) Within six months of the enactment of this ordinance, the directors shall jointly create, adopt, and publish a single complete streets checklist and associated procedures to be used by the directors and their staffs when initiating, planning, designing, revising, implementing and/or reviewing any transportation facility or project. The complete streets checklist shall be jointly updated from time to time by the directors as necessary to facilitate the implementation of complete streets.
- (c) As used in this section, “complete streets checklist” means a tool to collect data and information about the status of the roadway and the surrounding area, as well as the details of the transportation facility or project, with a goal of identifying specific elements that can be incorporated to support and balance the needs of all users. Such specific elements shall be part of an implementation procedure to be prepared in conjunction with compilation of a checklist. Data and information compiled in the checklist include, but are not limited to, traffic volume, street classification and type; an inventory of sidewalk condition, transit facilities, and parking restrictions; and recommendations from any existing neighborhood, bicycle, pedestrian, transit or other plan.
- (d) Complete streets features shall be incorporated into transportation plans, projects and programs following implementation procedures established by the complete streets checklist.
- (e) Within one year of the enactment of this ordinance, the directors shall evaluate and initiate updates of existing ordinances, codes, subdivision standards, rules, policies, plans and design guidelines to ensure their consistency with the complete streets policy and principles. Design standards, guidelines and manuals shall incorporate national industry best practice guidelines, and shall be updated from time to time by the directors as necessary to reflect current best practices.

(Added by Ord. 12-15)



**Sec. 14-33.4 Exceptions.**

- (a) A multi-modal approach and complete streets features are not required if a director of an affected department determines, in writing with appropriate documentation, prior to or during the design process, that:
- (1) Use of a street or highway by non-motorized users is prohibited by law; or
  - (2) The cost would be excessively disproportionate to the need or probable future use over the long term; or
  - (3) There is an absence of current or future need; or
  - (4) The safety of pedestrian, bicycle or vehicular traffic may be placed at unacceptable risk.
- (b) Each written exception with accompanying documentation shall become a public record and shall be published electronically or online on the official website of the city, and shall be on file and available for public inspection at the office of the city clerk and at the office of the department making the determination.
- (Added by Ord. 12-15)

**Sec. 14-33.5 Annual report; performance standards.**

- (a) On or before December 31st of each year following the enactment of this ordinance, the directors shall submit to the council a report detailing their compliance with the complete streets policy and principles during the prior fiscal year, and listing the transportation facilities and projects initiated during that year and the complete streets features incorporated therein. The report shall include a list of exceptions made pursuant to Section 14-33.4 for that year.
- (b) Within two years of the enactment of this ordinance, the directors shall establish and publish performance standards with measurable benchmarks reflecting the capacity for all users to travel with appropriate safety and convenience along roadways under the jurisdiction of the city. Annual reports for the year in which measurable performance standards are established, and all years thereafter, shall include a report of each agency's performance under such measures, and where appropriate, shall identify problem areas and suggested solutions, and provide recommendations to improve the process.
- (c) The annual reports required in this section may be part of the agency's annual reports required by charter.
- (Added by Ord. 12-15)

**Sec. 14-33.6 Training.**

The directors shall require and provide training for their staffs in complete streets policies, principles, and implementation procedures that may be applicable to the performance of their duties.

(Added by Ord. 12-15)

REVISED ORDINANCES OF HONOLULU

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## Appendix 14-A\*

## IMPROVEMENT DISTRICT ORDINANCES

Ord. No.	Approval Date	
88-82	6-19-88	Provides for cost of improvements in Improvement District No. 263, Nuuanu Valley Sewers, Section 3, Nuuanu, Honolulu, Oahu, Hawaii, Job No. W12-87.
88-99	8-10-88	Provides for cost of improvements in Improvement District No. 260, Kaneohe Sewers, Section 8, Kaneohe, Koolaupoko, Oahu, Hawaii, Job No. W10-85.
89-96	7-3-89	Provides for cost of improvements in Improvement District No. 264, Nanakuli Sewers, Section 2, Nanakuli, Waianae, Oahu, Hawaii, Job No. W17-88.
90-29	3-29-90	Amending Ord. 86-96, provides for cost of improvements in Improvement District No. 264, Nanakuli Sewers, Section 2, Nanakuli, Waianae, Oahu, HI, Job No. W17-88.
90-44	5-22-90	Provides for cost of improvements in Improvement District No. 262, Ewa Beach Sewers, Section 3, Honouliuli, Ewa, Oahu, Hawaii, Job No. W13-87.
90-67	7-25-90	Provides for cost of improvements in Improvement District No. 265, Makaha Sewers, Section 3, Makaha, Waianae, Oahu, Hawaii, Job No. W18-89.
91-63	8-21-91	Provides for cost of improvements in Improvement District No. 267, Kahaluu Sewers, Section 2, Kahaluu, Koolaupoko, Oahu, Hawaii, Job No. W17-90.
91-64	8-21-91	Provides for cost of improvements in Improvement District No. 266, Kahaluu Sewers, Section 1, Kahaluu, Koolaupoko, Oahu, Hawaii, Job No. 16-90.
92-15	3-10-92	Provides for cost of improvements in Improvement District No. 268, Leilehua Lane Sewers, Oahu, Hawaii, Job No. W23-89.
92-36	4-27-92	Provides for cost of improvements in Improvement District No. 266, Kahaluu Sewers, Section 1, Kahaluu, Koolaupoko, Oahu, Hawaii, Job No. W16-90.
92-37	4-27-92	Provides for cost of improvements in Improvement District No. 267, Kahaluu Sewers, Section 2, Kahaluu, Koolaupoko, Oahu, Hawaii, Job No. W17-90.
94-69	10-5-94	Provides for cost of improvements in Improvement District No. 270, Kaneohe Sewers, Section 9, Kaneohe, Koolaupoko, Oahu, Hawaii, Job No. W3-93
94-85	12-1-94	Authorizing refunding of improvement district bonds issued pursuant to Ord. 87-88 to finance the cost of improvements in Improvement District No. 261, Halawa Business Park, Halawa, Ewa, Oahu, Hawaii, and the issuance of refunding bonds therefor.
95-60	10-4-95	Provides for cost of improvements in Improvement District No. 272, Kahaluu Sewers, Section 4, Kahaluu, Koolaupoko, Oahu, Hawaii, Job No. W9-91. (Section 3 of this ordinance was amended by Ordinance 98-37.)
97-48	7-1-97	Provides for cost of improvements in Improvement District No. 274, Makaha Sewers, Section 4, Waianae, Oahu, Hawaii, Job No. W16-95. (Section 3 of this ordinance was amended by Ord. 98-05.)
98-05	2-12-98	Amends Ordinance No. 97-48 relating to providing for the cost of improvements in Improvement District No. 274, Makaha Sewers, Section 4, Waianae, Oahu, Hawaii, Job No. W16-95, by amending Section 3 relating to the cost of authorized improvements. (Section 3 was amended by Ordinance 98-51.)
98-37	6-9-98	Amends Ordinance 95-60 relating to providing for the cost of improvements in Improvement District No. 272, Kahaluu Sewers, Section 4, Kahaluu, Koolaupoko, Oahu, Hawaii, Job No. W9-91, by amending Section 3 relating to the cost of authorized improvements.
98-51	8-18-98	Amends Ordinance 98-05 relating to providing for the cost of improvements in Improvement District No. 274, Makaha Sewers, Section 4, Waianae, Oahu, Hawaii, Job No. W16-95, by amending Section 3 relating to the cost of authorized improvements.

\*Editor's Note: Ordinances prior to 1988 may be found in Appendix E to the Revised Ordinances 1978 (1983 Edition) and in Appendix E to the Revised Ordinances, 1987 Supplement to 1983 Edition.

00-42	7-27-00	Provides for cost of improvements in Improvement District No. 273, Waimano Sewers, Pearl City, Oahu, Hawaii, Job No. W17-93.
01-59	11-26-01	Provides for cost of improvements in Improvement District No. 275, Kaneohe Bay Sewers, Kaneohe, Koolaupoko, Oahu, Hawaii, Job No. W2-00
06-46	11-13-06	Provides for cost of improvements in Improvement District No. 276, Kailua Road Sewers, Kailua, Koolaupoko, Oahu, Hawaii, Job No. W01-05.

**(Appendix 14-B: Sewer Service Charge Schedules. Repealed by Ord. 12-7.)**

**Appendix 14-B**

**SEWER SERVICE CHARGE SCHEDULES**

The charges in column 1 apply to all customers, except those customers for which a sewer service contract/ agreement exists between the customer and the City and County of Honolulu which provides that column 2 charges shall apply. Sewer service contracts/agreements that allow column 2 charges are intended for customers who have paid their share of capital costs of collection, treatment and disposal of their wastewater by the city.

<b>Residential Sewer Service Charges</b>			
	<b>Effective July 1 of:</b>	<b>1</b>	<b>2</b>
<b>Single-family and duplex dwellings served by city water system per dwelling unit per month</b>			
1. Monthly base charge	2012	\$63.23	\$49.87
	2013	65.76	51.86
	2014	68.39	53.94
	2015	71.81	56.64
	2016	77.55	61.17
2. Charge per 1,000 gallons of metered water consumed, the water consumed reduced by the water irrigation factor of 20%; provided that residential users who install and maintain a water meter for submetering nonsewer water shall not have the water consumed reduced by the water irrigation factor	2012	\$3.77	\$3.77
	2013	3.93	3.93
	2014	4.08	4.08
	2015	4.29	4.29
	2016	4.63	4.63
<b>Single-family and duplex dwellings not served by city water system per dwelling unit per month</b>			
	2012	\$90.14	\$84.08
	2013	94.03	87.45
	2014	97.79	90.94
	2015	102.68	95.49
	2016	110.89	103.13

<b>Residential Sewer Service Charges</b>			
	<b>Effective July 1 of:</b>	<b>1</b>	<b>2</b>
Multiple-unit dwellings served by city water system per dwelling unit per month			
1. Monthly base charge	2012	\$43.47	\$34.28
	2013	45.21	35.66
	2014	47.02	37.08
	2015	49.37	38.94
	2016	53.32	42.05
2. Charge per 1,000 gallons of metered water consumed, the water consumed reduced by the water irrigation factor of 20%; provided that residential users who install and maintain a water meter for submetering nonsewer water shall not have the water consumed reduced by the water irrigation factor	2012	\$3.77	\$3.77
	2013	3.93	3.93
	2014	4.08	4.08
	2015	4.29	4.29
	2016	4.63	4.63
Multiple-unit dwellings not served by city water system per dwelling unit per month			
	2012	\$70.65	\$55.72
	2013	73.47	57.95
	2014	76.41	60.27
	2015	80.23	63.28
	2016	86.65	68.34

<b>Non-Residential Sewer Service Charges</b>			
	<b>Effective July 1 of:</b>	<b>1</b>	<b>2</b>
Domestic Strength Wastewater:			
1. Metered Water Usage			
(1) Monthly base charge per Equivalent Single Family Dwelling Unit (ESDU)	2012	\$63.23	\$49.87
	2013	65.76	51.86
	2014	68.39	53.94
	2015	71.81	59.64
	2016	77.55	61.17
(2) Charge per 1,000 gallons of metered water consumed, the water consumed reduced by the water irrigation factor of 20%	2012	\$3.77	\$3.77
	2013	3.93	3.93
	2014	4.08	4.08
	2015	4.29	4.29
	2016	4.63	4.63

<b>Non-Residential Sewer Service Charges</b>			
	<b>Effective July 1 of:</b>	<b>1</b>	<b>2</b>
<b>2. Metered Wastewater Discharge</b>			
(1) Monthly base charge per Equivalent Single Family Dwelling Unit (ESDU)	2012	\$63.23	\$49.87
	2013	65.76	51.86
	2014	68.39	53.94
	2015	71.81	59.64
	2016	77.55	61.17
(2) Charge per 1,000 gallons	2012	\$3.77	\$3.77
	2013	3.93	3.93
	2014	4.08	4.08
	2015	4.29	4.29
	2016	4.63	4.63
<b>Extra Strength Wastewater</b>			
1. Charge per 1,000 gallons of metered water consumed, the water consumed reduced by the water irrigation factor of 20%, use the following formula:  0.857 + 0.143(SSm/200) multiplied by applicable rate	2012	\$3.77	\$3.77
	2013	3.93	3.93
	2014	4.08	4.08
	2015	4.29	4.29
	2016	4.63	4.63
2. Charge per 1,000 gallons of wastewater discharge, use the following formula:  0.857 + 0.143(SSm/200) multiplied by applicable rate	2012	\$3.77	\$3.77
	2013	3.93	3.93
	2014	4.08	4.08
	2015	4.29	4.29
	2016	4.63	4.63

(Added by Ord. 12-7)

Appendix 14-C\*

CESSPOOL CHARGE SCHEDULES

A. Except as provided herein, the following charges shall be effective from July 1, 2003 to June 30, 2004:

- 1. Pumping cesspool on a per-call basis:
  - .....For a single truckload or fraction thereof
  - .....\$106.88
- 2. Pumping cesspool on a contract basis:
  - a. .... Single-family and duplex dwelling, per dwelling unit served per month
  - \$50.00
  - b. .... Multiple-unit dwellings, per dwelling unit served per month
  - \$35.00
- 3. Chemically treated cesspool:
  - a. ....Single-family and duplex dwellings, per dwelling unit served per month
  - \$55.00
  - b. .... Multiple-unit dwellings, per dwelling unit served per month
  - \$38.50

B. The following charges shall be effective from July 1, 2004:

- 1. Pumping cesspool on a per-call basis:
  - For a single truckload or fraction thereof:
  - a. .... Regular rate
  - \$132.90
  - b. Reduced rate for owners or occupants determined to be "low-income" by the director
  - pursuant to Section 14-7.3(a) .....\$86.50
- 2. Chemically treated cesspool:
  - a. ....Single-family and duplex dwellings, per dwelling unit served per month
  - \$55.00
  - b. .... Multiple-unit dwellings, per dwelling unit served per month
  - \$38.50

(Added by Ord. 01-52; Am. Ord. 02-60, 04-37)

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**\*Editor's Note:** For rebate of cesspool charges, see Section 5 of Ordinance 04-37.

**Appendix 14-D**

**WASTEWATER SYSTEM FACILITY CHARGES**

The following wastewater system facility charges are established in accordance with Sections 14-10.3, 14-10.4, 14-10.5 and 14-10.6, to be effective the first day of such fiscal year:

- (1) Residential wastewater system facility charge per ESDU:

<b>Fiscal Year</b>	<b>Amount (dollars)</b>
2011/12	\$5,707
2012/13	5,878
2013/14	6,055
2014/15	6,236
2015/16	6,424
2016/17	6,616

- (2) Low-income housing wastewater system facility charges per ESDU:

<b>Fiscal Year</b>	<b>Amount (dollars)</b>
2011/12	\$1,180
2012/13	1,216
2013/14	1,252
2014/15	1,290
2015/16	1,329
2016/17	1,368

- (3) Nonresidential wastewater system facility charge for domestic strength wastewater per ESDU:

<b>Fiscal Year</b>	<b>Amount (dollars)</b>
2011/12	\$5,707
2012/13	5,878
2013/14	6,055
2014/15	6,236
2015/16	6,424
2016/17	6,616

- (4) Nonresidential wastewater system facility charge for extra-strength wastewater per ESDU based on the following formula:

$$\text{Wastewater System Facility Charge for extra-strength wastewater} = A + ((SSi/200) \times B)$$

where SSi = the imputed suspended solids loading, in mg/L and applicable values for terms “A” and “B” are set forth as follows:

Fiscal Year	Terms in Extra-Strength Surcharge Formula (dollars)	
	A	B
2011/12	\$4,906	\$801
2012/13	5,053	825
2013/14	5,205	850
2014/15	5,361	876
2015/16	5,522	902
2016/17	5,687	929

Each fiscal year, the council shall review the wastewater system facility charge to determine if it remains appropriate or should be revised.

(Added by Ord. 01-52; Am. Ord. 03-11, 04-12, 05-019, 11-17)

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