

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.
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- 14-21.6** Assessments.
- 14-21.7** Deferment of improvements.
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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, or
 - (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, or
 - (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, shall 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.

In the case of a sidewalk which is to be constructed or improved independently of any other improvement, the highway along which the improvement 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.

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 shall 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 shall 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 shall 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.

(Sec. 24-1.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 89-2, 90-91)

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 benefitted 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 moneys 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 prorata 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 moneys 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 moneys 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 moneys 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 moneys 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 moneys 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.

Moneys 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 moneys 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 moneys 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 moneys received by the city from the payment of assessments made hereunder, the moneys 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 moneys of the city other than the moneys 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 moneys representing assessments collected for the maintenance district, the director of finance shall deposit the moneys in a special fund for the maintenance district for which they were collected, and the moneys 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 which 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 which are not applicable to all persons except as otherwise provided by law;
- (5) The street or road directly serves: (A) six or more parcels and at least six of the parcels served are owned by separate individuals or entities; (B) six or more residential structures where at least six of the structures served are owned by separate individuals or entities; or (C) a parcel of land which has one or more condominium buildings or apartment buildings which 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 and regulations adopted pursuant thereto;
- (9) The developer or subdivider of such street or road has not agreed to maintain such street or road in perpetuity;
- (10) An association of apartment owners or homeowners association does not maintain such 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 more interest in the fee title or an appropriate roadway easement in the street or road shall 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 shall submit their written approval of the maintenance work. The persons having the right to control the use of the street or road shall 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 one of the conditions the persons having the right to control the use of the street or road 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 or road surface or for the period of time specified in the agreement, whichever is longer. The requirement for a written request, approval and agreement shall not apply, however, to a (i) street or road over which the department of facility maintenance exercises surface maintenance responsibilities on the day prior to the effective date of this article, 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 shall 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 the effective date of this article 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.

- (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 the criteria set forth in subdivisions (1) through (11) 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 recover any 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.
- (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)

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, reconstruction, 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)