

Chapter 28

LEASE AND RENTAL OF CITY REAL PROPERTY, INCLUDING FEES

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Article 1. General Provisions

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Sec. 28-1.1 Purpose.

The purpose of this chapter is to establish a uniform procedure for the lease or rental of real property owned by the city, with the exception of the city hall building and the Honolulu municipal building. Any and all office spaces located within the subject two buildings shall be reserved for the exclusive use by agencies of the City and County of Honolulu. (Sec. 30-1.1, R.O. 1978 (1983 Ed.))

Sec. 28-1.2 Scope.

The scope of this chapter includes the policy that the lease or rental of property of the City and County of Honolulu or the award of concessions shall require public advertisements and bids, except under specific circumstances. This chapter also includes the required bidding procedures and attendant terms of agreements and penalties. (Sec. 30-1.2, R.O. 1978 (1983 Ed.); Am. Ord. 91-27, 97-02)

Sec. 28-1.3 Definitions.

The following words and phrases shall, for the purposes hereof, have the meaning respectively ascribed to them unless it is apparent from the context that a different meaning is intended:

"Agency" means any office, department, board, commission or other governmental unit of the city including the city council and its offices.

"Concession" means the grant to a private individual, partnership or corporation of the privilege to conduct operations essentially retail in nature, involving the sale of goods, wares, merchandise or services to the general public, such as restaurants, retail stores, parking facilities, golf driving ranges, canoe storage facilities (halaus), in or on land or buildings owned or controlled by the City and County of Honolulu.

"Council" means the city council of the City and County of Honolulu.

"Finance director" means the director of finance of the City and County of Honolulu.

"Managing director" means the managing director of the City and County of Honolulu.

"Nonprofit organization" means an association, corporation or other entity, organized and operated exclusively for religious, charitable, scientific, literary, cultural, educational, recreational or other nonprofit purposes, no part of the assets, income or earnings of which inures to the benefit of any individual or member thereof, and whose charter or other enabling act contains a provision that, in the event of dissolution, the assets owned by such association, corporation or other entity shall be distributed to another association, corporation or other entity organized and operated exclusively for nonprofit purposes, and which further qualifies for exemption from the general excise tax provisions of HRS Chapter 237, as amended, and under Section 501 of the Internal Revenue Code of 1954, as amended. Such nonprofit organization must not merely be a sponsor of the event, production, attraction or activity being given, but must actively promote, produce, stage or conduct such event, production, attraction or activity. (Sec. 30-1.3, R.O. 1978 (1987 Supp. to 1983 Ed.))

Article 2. Bidding Requirements and Procedures

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Sec. 28-2.1 Bidding required.

Unless expressly excepted in this chapter, no real property or any concession or concession space in any building or on any land owned by or under the jurisdiction of the City and County of Honolulu shall be leased or rented except under contract let under public advertisement for sealed tenders in the manner provided hereinafter. (Sec. 30-2.1, R.O. 1978 (1983 Ed.))

Sec. 28-2.2 Call for bids.

The finance director shall call for bids, accept bids and award concessions or award contracts to lease or rent property on terms, conditions and rentals approved by the corporation counsel, as to form and legality. (Sec. 30-2.2, R.O. 1978 (1983 Ed.))

Sec. 28-2.3 Qualification of bidders.

Before any prospective bidder shall be entitled to submit any bid required under this chapter, the bidder shall, not less than six calendar days prior to the day designated for opening bids, give written notice to the finance director of the bidder's intention to bid, and the finance director shall satisfy himself or herself of the prospective bidder's financial ability, experience and competence to carry out the terms and conditions of any contract that may be awarded. For this purpose, the finance director may require prospective bidders to submit answers, under oath, to questions contained in a questionnaire setting forth a complete statement of the experience, competence and financial standing of such prospective bidders. Whenever it appears to the finance director that any prospective bidder is not fully qualified and able to carry out the terms and conditions of the contract that may be awarded, the director may, after affording such prospective bidder an opportunity to be heard, refuse to receive or consider any bid offered by such prospective bidder. All information contained in the answers to questionnaires shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not fully entitled thereto shall be subject to penalties as provided by law. Questionnaires so submitted shall be returned to the bidders after having served their purpose. (Sec. 30-2.3, R.O. 1978 (1983 Ed.))

Sec. 28-2.4 Advertisement for bids.

- (a) Publication of a call for tenders for the awarding of concessions or concession spaces shall be made at least on three separate days in a daily newspaper of general circulation in the City and County of Honolulu.
- (b) Publication of a call for tenders for leasing of real property or any improvements thereon, other than a concession or concession space, shall be made once a week for at least two weeks in a daily newspaper of general circulation in the City and County of Honolulu.
- (c) Such public announcement shall include, but not be limited to the following information:
 - (1) Description of the concession, real property, or improvements and the objectives for it;
 - (2) Location;
 - (3) Scope of the award or lease;
 - (4) Length of the award or lease;
 - (5) Amount and type of government funds, if any, available for the project;
 - (6) Description of any special requirements of unique features.

(Sec. 30-2.4, R.O. 1978 (1983 Ed.))

Sec. 28-2.5 Cost of publication.

The finance director may require the party requesting the publication of a call for tenders to deposit with the director a certified check or cash equal to or greater than the estimated cost of publishing the advertisement for bids, before such advertisement is published. The cost of publication may be deducted from said deposit and retained by the city and county if said party fails to submit a bid. (Sec. 30-2.5, R.O. 1978 (1983 Ed.))

Sec. 28-2.6 Bids--Opening--Rejection.

The time of opening of such tenders shall not be less than five days after the last publication. All bids shall be sealed and delivered to the finance director, and shall be opened by the director at the hour and place to be stated in the call for tenders, in the presence of all bidders who attend, and may be inspected by any bidder. The finance director may reject any or all bids and waive any defects, when in the director's opinion such rejection or waiver will be for the best interest of the city and county. Upon completion of the evaluation and selection process, the finance director shall file a written report with the city clerk, including the results with the successful bidder. The city clerk, upon receipt of the written report, shall post same for public inspection under an appropriate title on the bulletin board on which meeting notices of the council, including its agenda, are posted and such report shall be a public record. (Sec. 30-2.6, R.O. 1978 (1983 Ed.))

Sec. 28-2.7 Bids--Withdrawals.

No bidder may withdraw such bid for a period of 60 days after the opening thereof. (Sec. 30-2.7, R.O. 1978 (1983 Ed.))

Sec. 28-2.8 Deposits to accompany bid.

All bids shall be accompanied by a deposit of legal tender or by a certified check payable to the finance director drawn on a bank doing business within the State of Hawaii, for or in a sum equal to five percent of the amount bid, but in no event to be less than \$50.00; provided, that when the amount bid exceeds \$50,000.00, the certificate of deposit or certified check shall be \$2,500.00 plus two percent of the amount in excess thereof. (Sec. 30-2.8, R.O. 1978 (1983 Ed.))

Sec. 28-2.9 Forfeiture of deposits--Return.

If the bidder to whom the contract is awarded fails or neglects to enter into the contract and furnish satisfactory security as required by this article, within 10 days after the award or within such further time as the finance director may allow, the finance director shall pay the deposit into the treasury as a realization of the City and County of Honolulu. If the contract is entered into and the security furnished within the required time, the deposit shall be returned to the successful bidder. Deposits made by the unsuccessful bidders shall be returned to them after the contract is entered into or, if the contract is not entered into, after the expiration of 60 days after the opening of the bids or after the finance director publishes another call for tenders, whichever is sooner. (Sec. 30-2.9, R.O. 1978 (1983 Ed.))

Sec. 28-2.10 Bond in lieu of deposit.

In lieu of the deposit of legal tender or a certified check, a bid may be accompanied by a surety bond naming the city and county as obligee, with the bidder as principal, and a surety company, authorized to do business as such in this state, as surety, in a penal sum equal to the deposit required under Section 28-2.8, conditioned upon the bidder entering into the contract and furnishing the required security within 10 days after the award or within such further time as the finance director may allow. (Sec. 30-2.10, R.O. 1978 (1983 Ed.))

Sec. 28-2.11 Contract execution--Award to highest responsible bidder.

All such contracts shall be in writing, shall be executed by the finance director in the name of the City and County of Honolulu, and shall be made with the highest responsible bidder, if such bidder shall qualify by providing the security required hereinbelow. If the highest and best bid or any other bid has been rejected, or if the bidder to whom the contract was awarded has failed to enter into the contract and furnish satisfactory security, the finance director may, in the director's discretion, award the contract to the next highest responsible bidder. (Sec. 30-2.11, R.O. 1978 (1983 Ed.))

Sec. 28-2.12 Security deposit.

Before any contract is entered into, the bidder shall give security for the compliance therewith by deposit of an amount equal to two months' rental or other charge required under the contract, except that in the case of a contract for the lease of residential property, a security deposit in an amount equal to one month's rent shall be required. In lieu thereof the finance director may accept good and sufficient bond for the said amount, naming the city and county as obligee, with the bidder as principal, and a surety company authorized to do business as such in this state, as surety. (Sec. 30-2.12, R.O. 1978 (1983 Ed.))

Sec. 28-2.13 Surety on bond--Justification.

If the surety or sureties on such bond shall be other than a surety company authorized to do business under the laws of this state, there shall be not more than four such sureties who shall severally justify such amounts as, taken together, will aggregate the full amount of the bond; provided, that in the case of such sureties they shall deposit with the finance director certified checks or certificates of deposit (payable on demand on or after such period as the finance director may stipulate) or bonds, stocks or other negotiable securities, or execute and deliver to such officer a deed or deeds of trust of real property, all of such character as shall be satisfactory to the finance director, in security equal to the full cash value of 100 percent of the amount for which each surety shall have assumed. The finance director may waive the necessity of furnishing such security, in cases where the director is satisfied as to the financial responsibility of the proposed surety or sureties; provided, that if there be but one personal surety, said surety shall justify the full amount of the bond. (Sec. 30-2.13, R.O. 1978 (1983 Ed.))

Sec. 28-2.14 Violation voids contract.

After the effective date of this chapter, any contract awarded or executed in violation of this chapter shall be void and of no effect. (Sec. 30-2.14, R.O. 1978 (1983 Ed.))

Sec. 28-2.15 Competitive sealed proposals.

(a) Notwithstanding anything to the contrary in this chapter, the city may lease or rent real property and/or improvements thereon by competitive sealed proposals when (1) such property and/or improvements will be used for cultural, arts, nature, sports, recreational, historical or other similar activities open to the public; (2) the city council approves of the use of such process by ordinance or resolution in advance of the issuance of the request for proposals, and (3) the director of budget and fiscal services determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the city. Factors to be considered in determining whether competitive sealed bidding is not practicable or not advantageous include:

- (1) Whether the award determination involves the consideration of factors in addition to financial return to the City and County of Honolulu;
- (2) Whether oral or written discussions may need to be conducted with offerors concerning technical and financial aspects of their proposals;
- (3) Whether offerors may need to be afforded the opportunity to revise their proposals, including revision of the financial return to the City and County of Honolulu; and
- (4) Whether an award may need to be based upon a comparative evaluation as stated in the request for proposals of differing financial return, quality, and contractual factors, in order to determine the most advantageous offering to the City and County of Honolulu. Quality factors may include technical and performance capability and the content of the technical proposal.

(b) Proposals shall be solicited through a request for proposals.

(c) Public notice of the request for proposals shall be given in the same form and manner for advertisements for bids.

- (d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during discussion. A register of proposals shall be prepared and shall be open for public inspection after the contract award.
 - (e) The request for proposals shall state the relative importance of (1) financial return to the city and (2) other evaluation factors.
 - (f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
 - (g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city, taking into consideration the financial return to the city and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.
- (Added by Ord. 02-64)

Article 3. Exceptions to Bidding Requirement

Sections:

- 28-3.1 Bidding not required--Leased or rental property--Conditions.**
- (28-3.2 Bidding not required--Development of special needs housing. Repealed by Ord. 04-33.)**
- 28-3.2 Reserved.**
- 28-3.3 Bidding not required--Concessions.**
- 28-3.4 Bidding not required--Leasing to private developers.**
- 28-3.5 Bidding not required—Housing or human services providers.**

Sec. 28-3.1 Bidding not required--Leased or rental property--Conditions.

The director of budget and fiscal services may award contracts to lease or rent property on terms, conditions and rentals approved by the corporation counsel as to form and legality without calling for public bids, when:

- (1) Eminent Domain. Real property and/or improvements thereon have been acquired by the City and County of Honolulu by eminent domain proceedings, or by negotiated purchase or exchange in lieu thereof, and where immediate use of the property acquired is not necessary. In that case, the property shall be rented on a month-to-month tenancy for up to one year. Upon recommendation of the director, the council may, by resolution, annually approve successive continuations of a month-to-month tenancy, each for up to one year. If the director determines there to be extraordinary circumstances, the director may recommend, and the council may by adoption of a single resolution approve, a continuation of a month-to-month tenancy for up to four years. Each month-to-month tenancy approved pursuant to this paragraph shall be revocable at the option of the city upon 30 days' written notice to vacate. In lieu of obtaining council approval under the previous terms of this subdivision (1), the director may lease or rent such property by public bidding for a period in excess of one year, pursuant to the provisions of this chapter.
- (2) Employee of the City and County of Honolulu or the State of Hawaii. Real property and improvements thereon are leased or rented to employees of the City and County of Honolulu or the state. Said property shall be leased or rented only under the following conditions:
 - (A) The party or parties to whom the property is leased or rented must be and continue to be an employee of the City and County of Honolulu or the state during the term of the demise; and
 - (B) The leasing or renting of the property to said employee must be related to the employee's employment.
- (3) Thirty-Day Period or Less. Real property and/or improvements thereon are leased for a period not to exceed 30 days. No extension of such lease shall be permitted without calling for public bids.
- (4) Tourist Activities Without Charge. Enterprises, shows or activities presented without charge primarily for the promotion of the tourist industry in and for the City and County of Honolulu regardless of which person, association or company sponsors such enterprise, show or activity; provided, however, that such lessee or tenant does not sell merchandise on the premises, directly or indirectly, or engage in any business promotions or advertising, whether oral, by printed matter, signs, displays or electronic devices.
- (5) Neal S. Blaisdell Center or the Waikiki Shell. The rental is for the use of facilities for the purpose of holding any event or attraction at the Neal S. Blaisdell Center or the Waikiki Shell in accordance with the provisions of Articles 6 through 9 of this chapter.
- (6) City and County Employee Organizations. Real property and/or office spaces that are leased or rented to any federal credit union of city and county employees or employees of city and county affiliate groups or organizations.
- (7) Eleemosynary Corporations. Real property and/or improvements thereon are leased or rented to any eleemosynary corporation, society or organization formed for the prevention of cruelty to animals, and which is authorized and empowered by law to seize and impound stray dogs running at large.
- (8) Government Employment Training Programs. Real property and/or improvements thereon are leased or rented to any nonprofit organization primarily engaged in employment training programs sponsored by the federal, state, or city and county government.
- (9) Accessory Uses. Real property is leased or rented to contractors who are awarded city construction contracts for use as a field office and storage of equipment and supplies. Rental shall be at the fair market rental and shall be limited to the duration of the construction contract only.

- (10) Governmental Subdivisions. Real property and improvements thereon are leased or rented for the use of any political or governmental subdivision of the federal, state or county governments.
- (11) Private Developer. Real property and improvements thereon are leased or rented to a private developer as described in Section 28-3.4.
- (12) Housing and Human Services Providers. Real property and/or improvements thereon are leased to a provider of housing and human services as prescribed in Section 28-3.5.
- (13) Telecommunications Facilities. City property is leased for use as telecommunications facilities under Article 12.

(Sec. 30-3.1, R.O. 1978 (1983 Ed); Am. Ord. 90-14, 92-95, 04-33, 05-020, 06-45)

(Sec. 28-3.2 Bidding not required--Development of special needs housing. Repealed by Ord. 04-33.)

Sec. 28-3.2 Reserved.

Sec. 28-3.3 Bidding not required--Concessions.

The finance director may award concessions on terms and conditions approved by the corporation counsel as to form and legality without calling for public bids, when:

- (a) Activities Without Charge. Concessions or concession spaces which are set aside without any charge for events, productions, attractions or activities including the exhibition and sale of handcrafts, works of art, produce or products of a nonprofit organization, as defined in Article 1, or its members as long as the sale of any craft item, works of art, produce or products are made by the member of the organization who actually makes, creates, grows or gathers the items being sold, and as long as all net profits earned by the nonprofit organization from the concession are to be applied to the expenses of the organization incurred in connection with events or activities directly related to the purpose for which it has been organized.
- (b) Periods of Two Days or Less. Concessions or concession spaces which are set aside for a period or periods of time not to exceed two successive days without any charge:
 - (1) For the exhibition and sale of works of art by artists who actually produce the works of art being exhibited and sold;
 - (2) For the exhibition and sale of handcrafted items being exhibited and sold; and
 - (3) For the display and sale of fruits and vegetables, seafoods and prepared but not manufactured food products by the person who actually grows or gathers the fruits and vegetables, catches the seafoods or prepares the food products being displayed and sold.
- (c) Handicapped or Blind Persons. Concessions or concession spaces which are set aside for the use of handicapped or blind persons or any nonprofit organization primarily engaged in physical rehabilitative programs.
 - (1) Nonprofit Private Corporations. The word "persons" contained herein shall include a nonprofit private corporation which has been exempted from taxation as prescribed under Section 501 of the Internal Revenue Code of 1986, as amended, and its articles of incorporation or association shall have a provision contained therein that the primary objective of the corporation is to service or aid or abet or assist the handicapped or blind persons.
 - (2) No Rent, Except for Maintenance Cost. Notwithstanding any provisions to the contrary contained herein, the finance director shall assess no rent for leasing or renting of concessions or concession space to handicapped or blind persons, including any vending machines assigned to such vendors; provided, that for real property, including improvements thereon, the finance director shall assess the cost of maintenance of that portion of such real property leased or rented to handicapped or blind persons.
- (d) Governmental Subdivisions. Concessions or concession spaces which are set aside for the use of any political or governmental subdivision of the federal, state or county governments.
- (e) Nonprofit Beachboy Concessions. Concessions or concession spaces which are set aside for beachboys licensed by the state department of transportation.
 - (1) Policy. The council finds that Hawaiian beachboys are rooted in the state's historical and cultural traditions and that there is a need for the city to provide for concessions available to licensed beachboys on beach property under the jurisdiction of the City and County of Honolulu.
 - (2) Definition. "Nonprofit beachboy concession" is the grant to a qualified beachboy association of the privilege to conduct operations essentially retail in nature, involving the rental of surfboards, bodyboards or canoes. A qualified beachboy association is an association which is dedicated to the preservation of the beachboy tradition and is incorporated as a nonprofit corporation in accordance with state law.
 - (3) Special Conditions to Be Met When Providing Beachboy Concessions on Beach Park Property under the Jurisdiction of the City and County of Honolulu. The following special conditions shall govern the award of nonprofit beachboy concessions on beach park property under the jurisdiction of the City and County of Honolulu:
 - (A) The department of parks and recreation shall designate specific sites on the beach for each beachboy concession and shall locate the sites so as not to impede access to and use of the beach by the public;
 - (B) A beachboy concession may offer to provide instruction for the use of rental equipment incidental to the rental of said equipment, and may offer the sale of canoe rides incidental to the rental of canoes; and
 - (C) The department of parks and recreation shall establish policies to ensure that the use of the nonprofit beachboy concessions is restricted to beachboys who are licensed pursuant to Chapter 82, Title 19, Hawaii Administrative Rules (department of transportation), and that such concessions are operated to provide equal opportunity for use by all licensed beachboys.

- (4) Fees and Charges for Beachboy Concessions. The department of parks and recreation is authorized to set the fees charged by the beachboy concessions.
 - (5) Rules. The director of parks and recreation shall adopt rules pursuant to HRS Chapter 91 necessary for the purposes of this subsection.
 - (f) Nonprofit Zoo, Cultural Park and Botanical Garden Concessions. Concessions or concession space at county zoos, cultural parks or botanical gardens set aside for use by support groups which are incorporated as nonprofit corporations in accordance with state law, for the purpose of supporting county aims and goals of the zoo and botanical gardens and cultural parks; provided that each support group shall annually submit to the director of parks and recreation and the council an audited financial statement of the revenues and expenditures of that support group.
 - (g) Coin-Operated Vending Machines. Concession spaces which are leased or rented for coin-operated vending machines except coin-operated insurance vending machines.
 - (h) Public Pay Telephones. Concession spaces which are leased or rented for public pay telephones.
 - (i) Hans L'Orange Baseball Facility. Concessions or concession spaces at the Hans L'Orange baseball facility which are set aside without charge to the permittee of a professional sports activity; provided, however, that the period of use of such concessions or concession space shall be limited to the term of the permit. As used in this section, unless the context otherwise requires:
 - (1) "Permittee" means the promoter, sponsor, exhibitor, league or other person who obtains a permit for the purposes of conducting a professional sports activity at a professional sports facility for which admission fees are charged;
 - (2) "Professional sports activity" means a game, event, exhibition, or activity of a recognized sport for which admission fees are charged and the participants in which receive compensation in return for participation in the sport;
 - (3) "Hans L'Orange baseball facility" means the playing field, bleachers, stands and other areas of the facility enclosed by a fence.
- (Sec. 30-3.3, R.O. 1978 (1983 Ed.); Am. Ord. 90-74, 94-53, 94-80, 95-61)

Sec. 28-3.4 Bidding not required--Leasing to private developers.

- (a) The city may lease or rent real property, including improvements thereon, to a private developer without calling for bids for the purpose of constructing housing, commercial, parking and other facilities or uses in implementing the housing and human services programs of the city. As used in this section, "developers" includes both for-profit and nonprofit developers of housing or other facilities for any need group, including low-moderate income persons and persons receiving human services as defined in Section 28-3.5.
- (b) The city agency shall make a public announcement on each occasion when any project is proposed or contemplated and set forth the objectives to be achieved for the project and request interested persons to submit proposals therefor. The city agency shall make such announcements in a daily newspaper of general circulation in the state once a week for two successive weeks. Such public announcement shall include, but not be limited to the following information:
 - (1) Description of the proposed project and the objectives for the project, including a description of the type of need group to be served;
 - (2) Location of the proposed project;
 - (3) Scope of the project;
 - (4) Length of the lease;
 - (5) Amount and type of government funds available for the project; and
 - (6) Description of any special requirements or unique features of the project.

Any interested developer shall file a statement of the developer's intention to submit a proposal with the city agency on or before 30 days after the last public announcement.
- (c)
 - (1) The city agency shall examine all proposals from interested developers and determine those developers the city agency deems qualified to perform the services for the specific project under consideration. The agency shall thereafter select no fewer than three developers who are considered most qualified to perform the required services; provided, that if there are fewer than three developers, after the deadline for submitting proposals, the agency may still select a developer and file such report with the city clerk. The city agency may negotiate with developers submitting the best three proposals in making a final selection. If no qualified proposals are received in response to the notice, the city agency may negotiate with and select a developer, provided that fact is noted in the report filed pursuant to subdivision (2).
 - (2) Upon completion of the evaluation and selection process, the director shall file a written report with the city clerk, including the results of the negotiations with the successful developer. The city clerk shall post the report for public inspection in City Hall where other public notices and meeting agendas of the council are posted. The report shall be a public record.
- (d) The evaluation and selection by any city agency of the design and developer for any housing project may include consideration of the following criteria:
 - (1) Implementation of the general plan objectives and policies in the area of housing;
 - (2) Compatibility with all other applicable general plan objectives and policies;
 - (3) Contribution toward implementing the planned land use pattern and other development or redevelopment policies for the site and surrounding area, as specified in the adopted development plan and any adopted special or special area plan district covering the area;
 - (4) Attractiveness and functionality of the project design. Specific considerations shall include:
 - (A) Conformance with the urban design principles and controls specified in the adopted development plan for the area;
 - (B) Relationship of structures within the project to each other, and of the entire project to surrounding structures, in terms of providing a harmonious composition of masses, colors and textures;
 - (C) Integration of spaces and building forms;

- (D) Relationship of off-street parking to the overall vehicular circulation system;
- (E) Pedestrian circulation plan;
- (F) Provision of recreational and other facilities for community and leisure time activities; and
- (G) Landscaping of the site;
- (5) Economic feasibility of the project. Specific considerations shall include:
 - (A) Demand for the type and price of housing to be provided;
 - (B) Projected development costs;
 - (C) Projected income from unit sales/rentals;
 - (D) Availability of federal aid; and
 - (E) Anticipated cash flow;
- (6) Developer's previous experience and financial capability; and
- (7) Compensation to be provided the city for the land lease or rental.
- (e) Subsequent to selection of the developer, the city agency shall issue to the developer a letter of intent which shall indicate to the developer that the developer may proceed at the developer's own expense and risk to initiate and undertake such studies as the developer may wish.
- (f) Subsequent to the receipt by the city clerk of the developer selection report, the council may require the city administration to prepare an appraisal of the land on which the project is proposed. The council may require the appraisal to be based on the land's highest and best use, the developer's proposed use, or both. In either case, the appraisal shall be based on the current Uniform Standards of Professional Appraisal Practice (USPAP) and Advisory Opinions as promulgated by the Appraisal Standards Board of the Appraisal Foundation. The requirements shall be expressed in a resolution approved by the council. The resolution also must include a due date for submittal of the appraisal to the council. The mayor may refuse to prepare the appraisal, provided notice thereof is submitted to the council within five working days of the city administration's receiving the resolution.
- (g) At the earliest feasible date, a lease and development contract shall be submitted by the city agency to the council for approval by resolution; provided, that the council, prior to approval by resolution, may add, delete or amend any term or condition of said lease and development contract.
The development contract must set forth in detail all covenants, obligations, restrictions, requirements and conditions to govern the proposed development and subsequent operation of the project; provided, that the development contract must indicate the studies and design work that must be satisfactorily carried out and approved as a condition to the execution of a lease for the property. The lease may be submitted to the council for approval by resolution separately from and subsequent to the submission of the development contract.
- (h) The lease rent may be negotiated. If the lease rent is for a nominal amount, the city agency shall certify that:
 - (1) A public hearing was held on the project, including the lease terms;
 - (2) There is a compelling public need for the housing or human services to be provided;
 - (3) A suitable and reasonably priced private facility is not available to meet the need;
 - (4) The developer has demonstrated financial need; and
 - (5) The lease complies with the restrictions specified in Section 28-4.2.
- (i) Any city agency administering a city housing project affected by the provisions of this chapter shall establish a system to determine preferences by lot in the event the number of qualified applicants exceeds the number of housing units available. Where the city has established preferences for housing units by ordinance or rules and regulations, the order of preferences within each category for the selection of units must be determined by lot.
- (j) With respect to any lease of city property used for the housing of low-moderate income persons, notwithstanding the provisions of Section 28-4.2(1), the city agency may extend any existing lease, subject to council approval by resolution, including a lease executed prior to the effective date of this ordinance, one or more times with the original lessee or a subsequent lessee approved by the city, each time for a period of up to an additional 75 years, if the city agency certifies that:
 - (1) The city continues to have the public need for the affordable housing located on the leased land and is reasonably likely to continue to have such public need for the period for which the lease is being extended;
 - (2) The lease extension will support the lessee's ability to finance any necessary rehabilitation and continued upkeep of the affordable units; and
 - (3) The lessee has experience operating, rehabilitating and owning or leasing multifamily housing for low-moderate income persons.

(Added by Ord. 90-14; Am. Ord. 97-08, 04-33, 15-43)

Sec. 28-3.5 Bidding not required—Housing or human services providers.

- (a) The city may lease or rent real property and/or improvements thereon without recourse to public bidding to providers of housing or human services. For the purposes of this section:
 - “Human services” includes child care, health services, and social services.
 - “Providers” means operators or managers of housing units for designated need groups, or operators or managers of other facilities wherein human services are provided to designated need groups.
 - “Social services” means those services required by persons with social problems or physical or mental disabilities. Persons requiring health or social services are also termed persons with special needs.
- (b) When such lease or rental to providers of housing or human services is contemplated, the director of budget and fiscal services shall cause to be published a notice stating:
 - (1) The service objectives to be achieved, including the type or types of housing or human services to be provided and any limits on client fees charged;
 - (2) The minimum qualifications that providers of housing or human services must meet;
 - (3) The criteria to be used to rank and select proposals; and
 - (4) The proposal form, applicable deadlines, and other information necessary for interested persons to submit proposals.

- The notice shall be published in a daily newspaper of general circulation at least once a week for two successive weeks, and the last notice shall be published at least 14 days prior to the deadline for submission of proposals.
- (c) The appropriate city agency shall examine all proposals properly submitted from interested persons, evaluate them according to the stated criteria, and determine the best three proposals thereby. The city agency may negotiate with persons submitting the best three proposals in making a final selection of a proposal.
 - (d) Following selection of a proposal, the city agency shall file a written report with the city clerk containing the public notice published to request proposals, a listing of the top three proposals, and identifying the proposal selected, including the results of any negotiations with the selected proposer.
 - (e) Upon receipt of the report, the city clerk shall post the report for public inspection in City Hall where other public notices and meeting agendas of the council are posted. The report shall be a public record.
 - (f) Following selection of the proposal, the city agency shall submit a lease or rental agreement therefor to the council for approval by resolution. The lease agreement shall contain any conditions and requirements applicable to the housing or human service to be provided, including client fees to be charged.
 - (g) The lease rent may be negotiated. If the lease rent is for a nominal amount, the city agency shall certify that:
 - (1) A public hearing was held on the project, including the lease terms;
 - (2) There is a compelling public need for the housing or human services to be provided;
 - (3) A suitable and reasonably priced private facility is not available;
 - (4) The developer has demonstrated financial need; and
 - (5) The lease complies with the restrictions specified in Section 28-4.2.
 - (h) Notwithstanding the provisions of subsections (b) through (g), in cases of impending foreclosure affecting a nonprofit housing or human services provider, the council by resolution may authorize the director to assign a lease to a new nonprofit housing or human services provider without a request for proposals.
- (Added by Ord. 92-95; Am. Ord. 04-33)

Article 4. Term of Agreements

Sections:

- 28-4.1 Duration.**
- 28-4.2 Lease restrictions--Generally.**

Sec. 28-4.1 Duration.

The term of any contract to lease or rent property of the City and County of Honolulu shall not exceed five years; provided, that the council by resolution may authorize the leasing or renting of property for a longer period when deemed necessary in the public interest and:

- (1) When the lessee or tenant is required by the terms of the proposed contract to expend the sum of \$25,000.00 or more for capital assets or to provide for the renovation or maintenance of any capital asset, or the lessee's or tenant's expenditure is equal to or in excess of the sum of \$25,000.00, as determined by the council. The term "capital asset" as used herein shall include not only the construction of improvements but the installation of furniture and fixtures, the cost of which would be depreciable over the period of the concession or lease in excess of five years;
- (2) When the property is devoted to the training and education of handicapped or blind persons and by the terms of the proposed contract, the lessee or tenant is required to construct on such property any improvement, the estimated cost of which, including cost of labor and materials, is equal to, or in excess of, the sum of \$10,000.00, as determined by the council;
- (3) When the real property is leased or rented for the use of the state or federal government or any agency thereof or the board of water supply;
- (4) When the city enters into a development contract with a person for the development of the property and the construction of housing units of all kinds and types as permitted in the area where the property is situated, or any other type of structural development which may be beneficial to the city; or
- (5) When the real property is leased to a housing or human services provider in accordance with Section 28 3.5 and the city agency proposing the lease certifies that the longer term is necessary to secure noncity financing or to enable the transfer of the real property to a different housing or human services provider.

(Sec. 30-4.1, R.O. 1978 (1983 Ed.); Am. Ord. 90-14, 02-55, 04-33)

Sec. 28-4.2 Lease restrictions--Generally.

Except as otherwise provided, the following restrictions shall apply to all leases made in accordance with this chapter:

- (1) No lease shall be for a longer term than 75 years including the initial term and any renewal or extension;
- (2) No lease shall be made to any person who is in arrears in the payment of taxes, rents or other obligations owing to the city.

(Added by Ord. 90-14; Am. Ord. 04-33)

Article 5. Penalty

Sections:

- 28-5.1 Disciplinary action.**

Sec. 28-5.1 Disciplinary action.

- (a) Any officer or employee who violates any of the provisions of this chapter upon a finding pursuant to a hearing to be conducted by such person's appointing authority, shall be subject to disciplinary action by such person's appointing authority.

- (b) Any lessee or tenant violating any provisions of this chapter shall cause the termination of the lease or tenancy and the lessee or tenant may be subject to the payment of any outstanding rental before and after such hearing.
- (c) Any person, officer or employee violating any provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and be subject to the provisions of Section 1-3.1, ROH 1990.
- (Sec. 30-5.1, R.O. 1978 (1983 Ed.))

**Article 6. General Provisions for the Lease and Rental Policy for the
Department of Enterprise Services**

Sections:

- 28-6.1 Purpose.**
28-6.2 Definitions.
28-6.3 Rental of facilities.
28-6.4 Equal treatment.
28-6.5 Payment in advance.
28-6.6 Form of payment.
28-6.7 Use without payment prohibited.
28-6.8 Bookings and cancellation—Appeal.
28-6.9 Insurance.
28-6.10 Security.
28-6.11 Waiver of fees—Use of facilities for fundraising—Authority.
28-6.12 Waiver of rental rates, charges and rules—Conditions.
28-6.13 Co-promotion of events by the department of enterprise services.

Sec. 28-6.1 Purpose.

The purpose of Articles 6 through 9 of this chapter is to establish a uniform policy for the lease and rental of facilities at the Neal S. Blaisdell Center and the Waikiki Shell including awarding of concessions therein. (Sec. 29-1.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 28-6.2 Definitions.

The following words and phrases shall, for the purposes of Articles 6 through 9, have the meaning respectively ascribed to them in this section, unless it is apparent from the context that a different meaning is intended:

“Admission event” means an event at which a fee is charged to or other consideration is exacted from an exhibitor, organization or member of the public for use of facilities or attendance at the event.

“Agency” means any office, department, board, commission or other governmental unit of the city, including the council and its officers.

“Concession” means the grant to a private individual, partnership, corporation or other entity of the privilege to conduct operations essentially retail in nature, involving the sale of goods, wares, merchandise or services to the general public, such as restaurants, retail stores, parking facilities, and golf driving ranges, in or on land or buildings owned by the City and County of Honolulu.

“Deposit” means the established portion of the rent charged to the tenant of an admission event in order to complete a contract.

“Dark day cost” means the one-day cost of maintaining a facility in good condition, when it is not rented.

“Director of enterprise services” means the director of enterprise services of the City and County of Honolulu.

“Exhibit show” means any event where the primary performance is a group of individual displays of products or services.

“Facility daily operating cost” means the combined dark day and use day cost to operate a facility, excluding any cost for services, which is not part of the rental. The “facility daily operating cost” shall be the basis for the fixed rental rate.

“Director of budget and fiscal services” means the director of budget and fiscal services of the City and County of Honolulu.

“Gross receipts from admission charges” means any consideration or value received by or on behalf of the tenant, less federal admission tax and state general excise tax, in connection with the use of the facilities rented, including admission to partake of food and refreshment to be served at the facilities covered by this chapter, whether or not such consideration or value is designated as a donation, gratuity, contribution or the like, and whether or not receipt of such consideration or value is evidenced by a ticket, card, ribbon, button, token, badge or the like.

“Managing director” means the managing director of the City and County of Honolulu.

“Meeting room” means the following rooms located at the Neal S. Blaisdell Center: Pikake Room; Hawaii Suites 1 to 12; Galleria 1st floor or 2nd floor; Maui Room; Oahu Room; Kauai Room; and Waikiki Room.

“Net square footage rent” means the rent charged for the square footage of sold booth space in any trade or exhibit show.

“Nonadmission event” means an event at which members of the public and exhibitors are admitted without charge or other obligation to pay for attendance at the event or use of the facilities except for an event where the facilities are rented to a nonprofit organization which rents the facilities pursuant to the terms and conditions set forth in Article 9.

“Nonperformance day” means the period from 10:00 a.m. to midnight when the facilities are used for any purpose not amounting to a “performance day.” The term “nonperformance day” shall include, but is not limited to, the use of the facilities for rehearsals, moving in and out of equipment, and preparation of the facilities for the performance or event. The provisions of Section 28-7.2 shall be applicable.

“Nonprofit organization” means an association, corporation or other entity actively pursuing its primary purpose in the State of Hawaii, organized and operated exclusively for religious, charitable, scientific, literary, cultural, educational, recreational or other nonprofit purposes, no part of the assets, income or earnings of which inures to the benefit of any individual or member thereof, and whose charter or other enabling act contains a provision that, in the event of dissolution, the assets owned by such association,

corporation or other entity shall be distributed to another association, corporation or other entity organized and operated exclusively for nonprofit purposes, and which further qualifies for exemption from the general excise tax provisions of HRS Chapter 237, as amended, and under Section 501 of the Internal Revenue Code of 1954, as amended. Such nonprofit organization must not merely be a sponsor of the event, production, attraction or activity being given, but must actively promote, produce, stage or conduct such event, production, attraction or activity.

"Overtime rate" means the rate quoted per each hour or fraction thereof and will be applicable when any facility is used beyond the rental periods specified herein, meaning the time period after midnight. However, at the discretion of the director of enterprise services, a one-hour grace period before the overtime rate for major events becomes applicable may be allowed. Rental of a facility solely on overtime rates is not authorized.

"Performance day" means the period from 10:00 a.m. to midnight when the facilities are used for an attraction, event or occasion attended by the public audience, or members of a group. The term "performance day" shall include the use of the facilities for the purpose of recording, filming or televising an attraction or event for a commercial purpose or for a purpose other than for the personal use of the camera or recording operator. However, the recording, filming or televising of an event or attraction, without charge by the tenant, for a bona fide news purpose or to advertise the event or attraction to be shown at the facilities covered herein, shall not otherwise convert a nonperformance day to a performance day.

"Sold booth space" means any booth space paid by cash, trade or other form of payment.

"Use day operating cost" means the incremental operating cost (above dark day cost) incurred when the facility is in use.

"Use day operating cost" includes labor, equipment and services not otherwise assessed as a direct cost to the tenant. Use day operating cost shall be the basis for the reduced rental rates assessed for nonadmission events and the deposits assessed for admission events.

(Sec. 29-1.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03, 05-017)

Sec. 28-6.3 Rental of facilities.

The use and rental of facilities at the Neal S. Blaisdell Center and the Waikiki Shell (hereinafter referred to as "facilities") shall be permitted according to the provisions of Articles 6 through 9 of this chapter. (Sec. 29-1.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-6.4 Equal treatment.

Rent and all other charges shall apply equally to all tenants using the facilities covered under this chapter, except as provided herein. (Sec. 29-1.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-6.5 Payment in advance.

All charges shall be paid in advance of an event except for charges that cannot be determined in advance. The applicable rent shall be paid upon execution of the rental agreement, except that at the discretion of the director of enterprise services the rent may be paid on a payment schedule. (Sec. 29-1.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-6.6 Form of payment.

All payments to the city shall be by legal tender, certified check, cashier's check, bank draft, postal money order, traveler's check, accepted charge card or some other similar form determined to be suitable by the director of budget and fiscal services; provided that the director of budget and fiscal services may authorize use of a performance bond or other guaranty in lieu of any deposit required for use of any facility at the Neal S. Blaisdell Center. (Sec. 29-1.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 98-17, 03-03)

Sec. 28-6.7 Use without payment prohibited.

The director of enterprise services is prohibited from allowing the use of any facility without payment except as specified herein. (Sec. 29-1.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-6.8 Bookings and cancellation—Appeal.

- (a) The facilities covered hereunder shall be opened for bookings for use by any individual or entity, without discrimination as to race, color, creed or belief; provided, that the director of enterprise services may cancel or refuse a booking if the director finds that the event or attraction booked or being booked will involve activities which are contrary to law, inconsistent with the public interest or threaten public safety, and provided that the director may give preference to events which promote Hawaii-based artists, whenever practicable. Except as hereinafter provided, the director of enterprise services shall have full authority in scheduling events or attractions, taking into consideration the possible financial return to the city and the overall economic benefits to the people of the city; the matter of public appeal, including the presentation of a diversity of events and attractions to the people of the city and the avoidance of oversaturation of bookings of events or attractions of a similar nature; the possible conflict of interests between the event or attraction of a prospective tenant and a tenant already booked; the maximum and full-time utilization of the facilities covered by this article; and other pertinent factors, all according to the best interests of the city. In scheduling events or attractions at the Neal S. Blaisdell Center Concert Hall, the director of enterprise services also shall take into consideration the need to make available and to preserve opportunities for the residents of the city to experience, on a continuing basis, performances of symphonic music, opera, and ballet in an appropriate concert hall setting, and the director, in accordance with this consideration, may give preference in concert hall scheduling to performances of symphonic music, opera, and ballet by Hawaii-based nonprofit organizations dedicated to these performing arts.
- (b) The director of enterprise services shall render a decision on the matter of any application for a booking within a reasonable time after such application has been made. Any party aggrieved by a decision of the director of enterprise services on the matter of bookings shall be entitled to have the decision reviewed by the managing director; provided, that the request for review is submitted in writing to the managing director within five calendar days after notification of the decision made by the director of enterprise services. If the managing director finds that the director of enterprise services' action was based on an erroneous finding of a material fact or that the director of enterprise services had acted in an

arbitrary or capricious manner or had manifestly abused the director's discretion, the managing director shall modify or reverse the decision of the director of enterprise services; otherwise, the managing director shall affirm the decision of the director of enterprise services.

- (c) The managing director shall take action within a reasonable time after receipt of the request for review. The decision of the managing director shall be final.

(Sec. 29-1.8, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 94-77, 03-03)

Sec. 28-6.9 Insurance.

The city may procure public liability insurance protecting the city from liability resulting from the use of the facilities mentioned herein in amounts and coverage as recommended by the director of enterprise services and as approved by the director of budget and fiscal services. Fire and property damage insurance protecting such facilities shall be procured in such amounts and under such conditions as may be prescribed by ordinance. The director of enterprise services is authorized to require a tenant to procure public liability, workers' compensation, property damage and fire insurance in such amounts and coverage as may be required by the director of enterprise services. The director of enterprise services may require other insurance coverage, such as food products' liability coverage, if the director deems the same necessary. Any party aggrieved by the decision of the director of enterprise services hereunder shall have the right of appeal to the managing director as provided in Section 28-6.8. (Sec. 29-1.9, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-6.10 Security.

Where the risks of nonperformance or improper performance of the rental agreement appear great, the director of enterprise services may require the tenant to give performance security by means of legal tender, certified check, cashier's check, bank draft, postal money order, traveler's check, surety bond or in some other suitable form to be approved by the director of budget and fiscal services, in an amount deemed appropriate by the director of enterprise services to assure full performance on the part of the tenant or to secure the interests of the city against improper performance or use of the rented facility. (Sec. 29-1.10, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-6.11 Waiver of fees—Use of facilities for fundraising—Authority.

- (a) Any other provision of this chapter notwithstanding, the director of enterprise services shall waive any and all rental fees and related charges, including service charges, for the use of the Neal S. Blaisdell Center and the Waikiki Shell for persons wishing to use such facilities to hold a fundraising event for victims of a major disaster occurring within the City and County of Honolulu.

- (b) For the purposes of this section, the following definitions shall apply:

"Major disaster" means any hurricane, tornado, storm, flood, high water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mud slide, drought, fire, explosion or other catastrophe occurring in any part of the City and County of Honolulu which causes damage, suffering and loss to such a degree that:

- (1) The president of the United States has declared, pursuant to the Disaster Relief Act of 1974, P.L. 93 288, that a major disaster exists such that the City and County of Honolulu or any part thereof is eligible for federal disaster assistance programs;
- (2) The governor of the State of Hawaii has declared pursuant to HRS Chapter 209 that a major disaster has occurred;
- (3) The mayor has issued a proclamation declaring the existence of a major disaster; or
- (4) The council has adopted a resolution declaring the existence of a major disaster.

"Fundraiser" means an event planned within six months of the occurrence of a major disaster wherein any and all proceeds collected, with the exception of all customary expenses for the production of such an event and the actual expenses for items which are sold to raise additional proceeds at the event, are to be used to aid the victims of the major disaster. The director of enterprise services shall adopt rules pursuant to subsection (d) establishing and defining "customary expenses" as used in this section.

- (c) Any person making application to the director of enterprise services to use the facilities at the Neal S. Blaisdell Center or Waikiki Shell pursuant to this section shall certify in writing that all the proceeds shall be used in conformity with the requirements of this section.

- (d) The director of enterprise services is authorized to adopt rules pursuant to HRS Chapter 91 not inconsistent with this section, to administer and implement the provisions of this section.

(Added by Ord. 88-23; Am. Ord. 88-96, 96-58, 03-03)

Sec. 28-6.12 Waiver of rental rates, charges and rules—Conditions.

- (a) The director of enterprise services may waive the percentage rental charges set forth in Section 28-7.1 and any or all rules governing the reservation, rental and use of the Neal S. Blaisdell Center Arena for a party applying for a waiver, for a maximum of two consecutive years; provided that the director determines that an event or attraction to be presented by the party:

- (1) Offers the potential for revenues to the city in subsequent years that are greater than the amount of the charges waived;
- (2) Offers the public a form of entertainment or sporting event that is not currently available at any facility in the city;
- (3) Will involve the rental of the facilities for at least six performance or game days per year;
- (4) Offers the potential to enhance the economic growth of the city by increasing tourism, attracting attendance by off-island fans or sports enthusiasts, promoting Hawaii by broadcasting the events nationally and internationally, and boosting retail sales in the city;
- (5) Will not preclude the use of the Neal S. Blaisdell Center Arena by the regular tenants of these facilities during the year;

- (6) Will not require the city to incur any costs for improvements or the purchase of new or additional equipment for a single event or attraction or to incur increased maintenance costs; and
 - (7) Will not interfere with or impair any existing contracts entered into by the city with commercial vendors, concessionaires or third parties involving the use of the Neal S. Blaisdell Center Arena.
- (b) The director of enterprise services is authorized to adopt rules pursuant to HRS Chapter 91 to implement this section, including establishing the waiver application form to be used by an applicant requesting a waiver.
- (Added by Ord. 98-17; Am. Ord. 03-03)

Sec. 28-6.13 Co-promotion of events by the department of enterprise services.

The director of enterprise services may waive the percentage rental charges set forth in Section 28-7.1 and enter into a co-promotion relationship with a tenant in order to bring to the Neal S. Blaisdell Center Arena, the Neal S. Blaisdell Center Exhibition Hall, the Neal S. Blaisdell Center Concert Hall or the Waikiki Shell a major commercial event which will be popular with the community and whose initial cost of presentation creates a financial risk which would prohibit the tenant from booking the event without a shared risk arrangement. The director of enterprise services may then co-promote the event with the tenant. All expenses from the event for both the city and the tenant will be netted from gross receipts. The net proceeds from the event would then be split equally between the tenant and the city.

The director of enterprise services shall report to the council no later than 30 days after June 30 of each year detailing, for the fiscal year just ended, the events co-promoted by the department and the increased revenues and bookings resulting therefrom compared to the previous year.

(Added by Ord. 06-35)

Article 7. Rental Schedule

Sections:

- 28-7.1 Rates.**
- (28-7.2 Definitions. Repealed by Ord. 03-03.)**
- 28-7.2 Reserved.**
- 28-7.3 Services included in rental charge.**
- 28-7.4 Assignment of rights or privileges prohibited.**
- 28-7.5 Broadcasting, taping or filming--Permission required.**
- 28-7.6 Facilities use by city agencies.**
- 28-7.7 Rules.**

Sec. 28-7.1 Rates.

(a) NONADMISSION EVENTS

Users of facilities used for nonadmission events shall pay the following charges as applicable.

- (1) Except for events qualifying for reduced rental rates, the following fixed rental rates shall be charged. The fixed rental rates shall cover the facility daily operating cost of each facility.

(A)	Arena	
	Performance Day	\$5,396.00
	Nonperformance Day	2,698.00
	Overtime rate (per hour).....	594.00
(B)	Concert Hall	
	Performance Day	3,409.00
	Nonperformance Day	1,705.00
	Overtime rate (per hour).....	375.00
(C)	Exhibition Hall	
	Performance Day	3,901.00
	Nonperformance Day	1,951.00
	Overtime rate (per hour).....	429.00
(D)	Pikake Room	
	Performance Day	950.00
	Nonperformance Day	475.00
	Overtime rate (per hour).....	105.00
(E)	Hawaii Suites 1 to 12	
	Performance Day	92.00
	Nonperformance Day	92.00
(F)	Galleria 1st floor or 2nd floor	
	Performance Day	230.00
	Nonperformance Day	115.00
	Overtime rate (per hour).....	25.00
(G)	Maui Room	
	Performance Day	144.00
	Nonperformance Day	144.00
(H)	Oahu Room	
	Performance Day	121.00
	Nonperformance Day	121.00
(I)	Kauai Room	
	Performance Day	109.00

	Nonperformance Day	109.00
(J)	Waikiki Shell	
	Performance Day	1,948.00
	Nonperformance Day	974.00
(K)	Waikiki Shell Amphitheater	
	Performance Day.....	649.00
	Non Performance Day.....	325.00
(L)	Nonfacility Space	
	Performance Day	\$.04/sq. ft.
	Nonperformance Day	\$.02/sq. ft.

(2) Reduced Rental Rates.

When facilities are only rented on low use days (Mondays, Tuesdays or Wednesdays) or less than five weeks in advance of the use day, the tenant shall pay a reduced rent. The reduced rental rates shall cover the use day operating cost for each facility. Facility rentals by the Blaisdell Center's in-house caterers for all events approved by the director of enterprise services will be assessed at the reduced rental rate except where the caterer's client is a qualified nonprofit organization as defined in this article. In such situation the caterer will be assessed the applicable nonprofit rate.

(A)	Arena	
	Performance Day	\$3,788.00
	Nonperformance Day	1,894.00
(B)	Concert Hall	
	Performance Day	2,121.00
	Nonperformance Day	1,061.00
(C)	Exhibition Hall	
	Performance Day	2,473.00
	Nonperformance Day	1,237.00
(D)	Pikake Room	
	Performance Day	685.00
	Nonperformance Day	343.00
(E)	Hawaii Suites 1 to 12	
	Performance Day	69.00
(F)	Galleria 1st floor or 2nd floor	
	Performance Day	230.00
(G)	Maui Room	
	Performance Day	144.00
(H)	Oahu Room	
	Performance Day	121.00
(I)	Kauai Room	
	Performance Day	110.00
(J)	Waikiki Shell	
	Performance Day	1,558.00
	Nonperformance Day	779.00
(K)	Waikiki Shell Amphitheater	
	Performance Day	520.00
	Nonperformance Day	260.00
(L)	Nonfacility Space	\$.04/sq. ft.

(b) ADMISSION EVENTS

Users of facilities used for admission events shall pay the following charges as applicable:

(1) Deposits.

Deposits for admission events shall cover the facility use day operating cost and are due upon execution of the rental agreement:

(A)	Arena and Arena Theater Configuration (one half arena seating and set-up for stage show.)	
	Performance Day	\$3,788.00
	Nonperformance Day	1,894.00
(B)	Concert Hall	
	Performance Day	2,121.00
	Nonperformance Day	1,061.00
(C)	Exhibition Hall	
	Performance Day	2,473.00
	Nonperformance Day	1,237.00
(D)	Pikake Room	
	Performance Day	685.00
	Nonperformance Day	343.00
(E)	Hawaii Suites 1 to 12	
	Performance Day	69.00
(F)	Galleria 1st floor or 2nd floor	
	Performance Day	230.00
(G)	Maui Room	
	Performance Day	144.00
(H)	Oahu Room	

	Performance Day	121.00
(I)	Kauai Room	
	Performance Day	109.00
(J)	Waikiki Shell	
	Performance Day	1,557.00
	Nonperformance Day	779.00
(K)	Waikiki Shell Amphitheater	
	Performance Day	520.00
	Nonperformance Day	260.00
(L)	Nonfacility Space \$.04/sq. ft	

(2) Percentage Rental Rates.

The tenant shall pay the applicable deposit or percentage rent, whichever is greater, based upon gross receipts from admission charges. Percentage rent shall be based upon the schedule listed below and calculated on gross receipts from admission charges for each contracted event, which performances shall occur in a period of up to seven consecutive days. Each seven consecutive day period or portion thereof, shall begin a new calculation of the percentage rent period.

Notwithstanding the foregoing, a nonprofit organization as defined in Section 28-6.2, which takes a collection or donation from attendees at an event held at the Blaisdell Center or the Waikiki Shell but does not charge a formal admission fee shall be charged no more than three (3) times the minimum deposit for each performance day as facility rent.

- (A) Arena
- (i) Full Arena
 - 10.0% of gross receipts up to \$150,000.00; plus
 - 8.5% of gross receipts from \$150,000.01 to \$250,000.00; plus
 - 7.5% of gross receipts from \$250,000.01 to \$350,000.00; plus
 - 6.5% of gross receipts from \$350,000.01 to \$450,000.00; plus
 - 5.5% of gross receipts from \$450,000.01 to \$550,000.00; plus
 - 5.0% of gross receipts over \$550,000.00.
 - (ii) Arena in Theater Configuration
 - 5% of gross receipts.
 - (iii) Should a tenant request a cap on the percentage rent as a condition of bringing to the Arena a major popular commercial event with a minimum of two consecutive performances, the director may set a rent cap as follows:
 - For the first two performances, the percentage rent shall be calculated as prescribed in this section and the percentage rent shall be capped at a total of \$53,000.00.
 - For each additional performance of the event, the percentage rent shall be calculated as prescribed in this section and the percentage rent shall be capped at \$26,500.00.
- (B) Waikiki Shell
- (i) Waikiki Shell
 - When the Waikiki Shell is rented during the months of April through August, the following percentage rates will apply:
 - 10.0% of gross receipts up to \$75,000.00; plus
 - 8.5% of gross receipts from \$75,000.01 to \$150,000.00; plus
 - 5.0% of gross receipts over \$150,000.00.
 - When the Waikiki Shell is rented during the low-use months of September through March, the following percentage rates will apply:
 - 8.5% of gross receipts up to \$150,000.00; plus
 - 5.0% of gross receipts over \$150,000.00.
 - (ii) Waikiki Shell Amphitheater
 - 5% of gross receipts.
- (C) Concert Hall
 - 5.0% of gross receipts up to \$500,000.00; plus
 - 5.0% of gross receipts in excess of 75% of the weekly gross potential (based upon ticket price and salable seats). The maximum weekly percentage rent for the Concert Hall shall be \$40,250.00.
- (D) Exhibition Hall
 - 10.0% of gross receipts.
- (E) Pikake Room
 - 5.0% of gross receipts.
- (F) Hawaii Suites, Maui, Oahu, Kauai and Galleria
 - 5.0% of gross receipts.

(3) Net Square Footage Rental. Net square footage is calculated by the facility in which the booth space is located. The booth space shall be the area a subcontractor of the tenant shall have rented to present a product, service or other commercial display. Rent shall be \$0.18 per net square foot per event day. A tenant shall pay the greater of the deposit, the total net square footage rental, or the percentage rental rate for each event day.

(4) Exhibition Hall and Meeting Rooms Rental for Fundraisers. Where the exhibition hall and meeting rooms are rented for the presentation of a fundraising event sponsored by a nonprofit organization, a bona fide political party, which qualifies under Hawaii's election laws, or a bona fide political candidate, who qualifies under Hawaii's election laws, the tenant of the exhibition hall shall pay the applicable rental charge or 10 percent of the donated gross receipts collected for the event, whichever is greater; provided, that a rental cap shall apply

- which provides that the percentage rental shall not exceed twice the applicable deposit; and this rental cap shall not apply to the Waikiki Shell, arena or the concert hall if it is used for a fundraising event.
- (5) Facility Use for Indoor Sports Practice Rental. When the sports surface is already installed, ordinary lighting is used, and there are no additional labor, cleanup and air conditioning costs incurred by the city, the use of the facility for practice purposes, at the discretion of the director of enterprise services, is permissible without charge; provided, that a waiver of liability is signed by the tenant.
- (c) Nonperformance Day Rental.
- (1) When renting either the exhibition hall or the Pikake Room, the tenant will be entitled to the nonperformance day rental rate for the number of days equal to the number of performance days. Any nonperformance days exceeding that number will be charged at the fixed rental rate, reduced rental rates, or deposit, as applicable, for a performance day for the facility.
- (2) Any tenant renting the arena for an event which requires more than eight hours to change over the facility for that event will be charged a nonperformance day at the beginning and end of the booking.
- (d) Charges for Facilities and Services Not Specified. The director of enterprise services shall be authorized to establish and assess reasonable rental charges for those facilities and services not specified herein.
(Sec. 29-2.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 98-17, 03-03, 05-017, 06-35, 06-42, 11-15)

(Sec. 28-7.2 Definitions. Repealed by Ord. 03-03.)

Sec. 28-7.2 Reserved.

Sec. 28-7.3 Services included in rental charge.

In return for the rental payment, the city shall furnish the tenant with the use of the facilities for the purposes specified, ordinary lighting, ordinary cleanup and air conditioning, if available. The rental payment shall not include the services of electricians, spotlight operators, stagehands, musicians, ticket sellers, ushering personnel, janitors, security, medical services or any other services and extraordinary costs unless specified in the rental agreement. The director of enterprise services may require a tenant to make a reasonable deposit to be determined at the director's discretion to cover anticipated extraordinary cleanup costs, or require the tenant to arrange for cleanup of the facility at the tenant's own expense, or both. (Sec. 29-2.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-7.4 Assignment of rights or privileges prohibited.

The assignment of any rights or privileges under a rental agreement is prohibited without the written consent of the director of budget and fiscal services. When there is an authorized full or partial assignment of such rights or privileges, the director of enterprise services is authorized to charge and collect from the tenant assignor an additional sum equal to the total assessment for the facility rented. The provisions of Sections 28-6.9 and 28-6.10 shall also be applicable to an assignee. (Sec. 29-2.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-7.5 Broadcasting, taping or filming--Permission required.

All rental agreements shall reserve the right to the city to negotiate charges for radio and television broadcasts, motion picture or recording privileges in the facilities, not exceeding 10 percent of anticipated receipts from the sale of broadcast rights by the tenant, and residual payments for the use of any film, videotape, recording or taping made in a facility covered by the policy. The use of the facilities to broadcast, film, videotape or record without the written permission of the city shall be prohibited. Any tenant who films, tapes, broadcasts or records any event in the facilities rented without the permission of the city may be assessed a charge fixed at the discretion of the director of enterprise services consistent with charges negotiated with tenants similarly situated plus a 25 percent penalty of such charge. (Sec. 29-2.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-7.6 Facilities use by city agencies.

Any city agency may reserve and use any of the facilities covered herein upon written confirmation by the director of enterprise services. Prior to issuing such confirmation, the director of enterprise services shall ensure that the appropriate departmental transfer of funds representing minimum rental and all other charges shall be accomplished. Rental charges may be waived, at the discretion of the director of enterprise services, if the facility is available and booked no more than three weeks in advance of the event date. (Sec. 29-2.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-7.7 Rules.

The director of enterprise services shall adopt rules, in accordance with HRS Chapter 91, not inconsistent with this chapter, governing the reservation, renting and use of the facilities covered herein. (Sec. 29-2.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Article 8. Concessions

Sections:

28-8.1 Awarding of concessions.

Sec. 28-8.1 Awarding of concessions.

(a) Concessions in the facilities shall be awarded as provided by law. The term of any concession shall not exceed a period of five years.

- (b) The sale and consumption of alcoholic beverages shall be in conformity with applicable laws. However, the sale and consumption of alcoholic beverages shall be prohibited if the tenant of the facility in which such concession is located objects to such sale and consumption.
(Sec. 29-3.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Article 9. Nonprofit Organizations

Sections:

- 28-9.1 Facilities use and rental by nonprofit organizations.**
- 28-9.2 Proof of nonprofit status.**
- 28-9.3 Rental rates.**
- 28-9.4 Special performances.**
- 28-9.5 Equipment rental.**
- 28-9.6 Scheduling of nonperformance days.**
- 28-9.7 Applicability of Articles 6 through 9.**

Sec. 28-9.1 Facilities use and rental by nonprofit organizations.

A nonprofit organization may use the facilities of the Neal S. Blaisdell Center and the Waikiki Shell under the terms and conditions provided herein. (Sec. 29-4.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 28-9.2 Proof of nonprofit status.

The nonprofit organization shall provide proof to the director of enterprise services that it qualifies under the definition of a "nonprofit organization" set forth in Section 28-6.2. (Sec. 29-4.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-9.3 Rental rates.

(a) Nonprofit Fixed Rental.

- (1) The Department of Enterprise Services has established nonprofit fixed rental rates at the Neal Blaisdell Center Arena, Concert Hall, Pikake Room and Waikiki Shell equivalent to the applicable use day operating cost for facilities rentals of any week. Rates will be adjusted annually at the beginning of each fiscal year commencing on July 1, 2011 in accordance with the rate schedule in Section 28-9.3 below until the nonprofit fixed rental rate for the facilities identified is equivalent to but no more than the use day operating cost for the appropriate facility. After attainment of such coverage, the department will conduct a use day operating cost review on a biennial basis thereafter and undertake rental adjustment through the adoption of rules pursuant to HRS Chapter 91 to maintain the nonprofit rental rates at the use day operating cost described herein.
- (2) Nonprofit Fixed Rental from July 1, 2011 through July 1, 2015

Facility/Day	from July 1, 2011 to June 30, 2013	from July 1, 2013 to June 30, 2015	from July 1, 2015
Arena- Performance Day	\$3,459.00	\$3,623.00	\$3,788.00
Arena- Nonperformance Day	1,730.00	1,812.00	1,894.00
Concert Hall – Performance Day	1,936.00	2,028.00	2,121.00
Concert Hall – Nonperformance Day	968.00	1,014.00	1,061.00
Exhibition Hall – Performance Day	2,258.00	2,365.00	2,473.00
Exhibition Hall – Nonperformance Day	1,129.00	1,183.00	1,237.00
Pikake Room – Performance Day	626.00	656.00	685.00
Pikake Room – Nonperformance Day	313.00	328.00	343.00
Waikiki Shell – Performance Day	1,422.00	1,489.00	1,557.00
Waikiki Shell – Nonperformance Day	711.00	745.00	779.00

- (3) The nonprofit organization shall pay the nonprofit fixed rental rates, reduced rental rates, or deposit, as applicable, for each day of use. The percentage rental rates as set forth in Section 28-7.1(b)(2), shall be applicable to a nonprofit organization, except for the rental of the concert hall for which the additional rental charge shall be five percent of the gross receipts in excess of \$40,250.00 as established in Sec. 28-7.1(b)(2)(C).
- (4) Public educational institutions or private educational institutions which are licensed by the state department of education and qualify as nonprofit organizations shall pay the nonprofit fixed rental rates, reduced rental rates, or deposit, as applicable, for each day of use; provided that the activity or the sponsored program which takes place at the center is an integral part or extension of an established school curriculum, including but not limited to athletic, musical, cultural (plays and dramas), social (school dances or graduation exercises) and educational (lectures and seminars) activities; provided further that this exception shall not be available if the activity or program is primarily for fundraising purposes. Any activity or program shall be deemed primarily for

fundraising purposes when the funds raised through admissions, donations or gifts or other things of value exceed the cost of sponsoring the activity or program at the center or exceed the amount budgeted for the curriculum activity or program for which the center was rented. The percentage rental rates, as set forth in this section or Section 28-7.1 (b)(2), shall be applicable to a nonprofit organization, except for the rental of the concert hall for which the additional rental charge shall be five percent of the gross receipts in excess of \$40,250.00.

- (b) (1) Any nonprofit organization renting the concert hall for 21 or more consecutive days shall pay the minimum rental due for that rental period as specified in subsection (a) plus five percent of gross receipts for the rental period in excess of \$250,000.00.
- (2) Any nonprofit organization that rents the concert hall and qualifies for the rental adjustment contained in Section 28-9.3(b)(1) may, prior to receiving a signed contract from the city, or with their agreement after receiving a signed contract from the city, be displaced from the contracted date by the department of enterprise services to allow the use of the facility by another tenant that will provide an event that offers greater financial benefit to the department; be of large public appeal; and offer an attraction to the community that would not otherwise be presented without the availability of the concert hall. If a nonprofit organization is displaced as described above, the nonprofit organization shall be given replacement use of the Waikiki Shell but at the same not-for-profit rate as is established here for the Concert Hall.

(Sec. 29-4.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03, 05-017, 06-35, 11-15)

Sec. 28-9.4 Special performances.

The nonprofit organization shall be accorded the use of the concert hall at no charge for fixed rental, and no charge levied for equipment rental or usher fees, under the following conditions:

- (a) The performance shall consist of events or attractions staged primarily for the educational and cultural betterment of the youth of Hawaii 18 years old and under;
- (b) The performance shall be authorized in writing by the state department of education and shall be held on regular school days;
- (c) The performance shall be held between the matinee hours of nine a.m. and two p.m. on a space available basis to be determined by the director of enterprise services; and
- (d) The admission price for the performance shall not exceed \$2.00 per student.

(Sec. 29-4.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 99-03, 03-03)

Sec. 28-9.5 Equipment rental.

The nonprofit organization shall pay the prevailing equipment rental rates established by the director of enterprise services for the use of equipment. (Sec. 29-4.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-9.6 Scheduling of nonperformance days.

The scheduling of nonperformance days shall be on a space available basis to be determined by the director of enterprise services. (Sec. 29-4.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Sec. 28-9.7 Applicability of Articles 6 through 9.

Except as otherwise provided in this article, all of the provisions of Articles 6 through 9 shall apply to nonprofit organizations. (Sec. 29 4.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-03)

Article 10. Severability

Sections:

28-10.1 Severability.

Sec. 28-10.1 Severability.

The provisions of this chapter, as enacted by this ordinance, are hereby declared to be severable. In accordance therewith, if any portion of said chapter is held invalid for any reason, the validity of any other portion of this chapter shall not be affected and if the application of any portion of this chapter to any person, property or circumstance is held invalid, the application hereof to any other person, property or circumstances shall not be affected. (Sec. 30-6.1, R.O. 1978 (1983 Ed.); (Sec. 29-5.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

Article 11. Lease and Permit Policy for the Grounds of City Hall and the Honolulu Municipal Building

Sections:

28-11.1 Definitions.

28-11.2 Applicability.

28-11.3 Terms and conditions.

28-11.4 Permitted private uses of grounds.

28-11.5 Application procedure.

28-11.6 Copies of permit and lease applications to be provided to council—Notice of approval.

Sec. 28-11.1 Definitions.

For the purposes of this article, the following terms shall have the following meanings, unless it is apparent from the context that another meaning is intended.

"Active use" of grounds means use of the grounds while activities or events are being held for patrons, or goods or services are being sold to patrons.

"Entry fees" means any fees charged during a major event by any person, including the lessee, to persons for:

- (1) Entry onto the grounds of City Hall and the Honolulu Municipal Building or into any contiguous area of the grounds in excess of 1,000 square feet; or
- (2) Use of any public walkway.

"Event" means any gathering, held in whole or in part by a person or persons on the grounds of City Hall and the Honolulu Municipal Building.

"Exempt event" means any event:

- (1) In which no more than 25 persons are anticipated to participate;
- (2) For which there is no sound amplification;
- (3) Which lasts for a period of less than three hours;
- (4) For which no fee is charged for participation;
- (5) Involving no sales or solicitations for the sale of any product or service; and
- (6) For which no temporary structures are set up.

"Fee" includes any charge, however denominated, whether in the form of money, token, script or other medium of value.

"Food" includes beverages, condiments and utensils.

"Grounds of City Hall and the Honolulu Municipal Building" or "grounds" means Tax Map Key parcels 2-1-33: 7 and 2-1-33: 10, but excluding City Hall, the Honolulu Municipal Building, the City Hall Annex, the portion of Tax Map Key parcel 2-1-33: 10 that is set aside for use as the Civic Center child care facility and, to the extent that they may be within said parcels, the public sidewalks immediately abutting King Street, Alapai Street and Beretania Street. For purposes of this definition, the inner courtyards of City Hall and the Honolulu Municipal Building shall be deemed a part of those buildings.

"Hold" includes "conduct," "sponsor" or "promote."

"Lease" means any lease agreement, rental agreement or concession agreement.

"Lessee" means any person holding any lease for use of all or any portion of the grounds of City Hall and the Honolulu Municipal Building.

"Major event" means an event for which the person holding the event desires authority to:

- (1) Impede any person from access to, or charge a fee to any person for access across the grounds of City Hall and the Honolulu Municipal Building to, City Hall, the Honolulu Municipal Building, the City Hall Annex, the Civic Center parking facility or the Civic Center child care facility;
- (2) Prevent any person from having use of, or charge any person a fee for use of, any public walkway; or
- (3) Partition, fence, rope, cordon off or otherwise demarcate any contiguous area of more than 1,000 square feet of the grounds for purposes of precluding any person from entering the area or for purposes of charging a fee to any person to enter the area.

"Minor event" means any event other than a major event or exempt event.

"Person" includes any natural person; any limited or general partnership or joint venture; any limited liability company; any corporation, whether professional, for profit or not-for-profit; any trust, including any business or land trust; and any other private organization, association or entity. The term shall not include a governmental agency.

"Public walkway" means any walkway or pathway, including any ramp or steps, designed to accommodate pedestrian traffic, whether paved with asphalt, concrete, brick or any other material located on the grounds of City Hall and the Honolulu Municipal Building, but excluding the public sidewalks immediately abutting King Street, Alapai Street, Punchbowl Street and Beretania Street.

"Sublessee" means a person authorized, expressly or impliedly, by any person holding a lease entered into under this article for a major event, to provide goods or services to the patrons of the major event.

"Subpermittee" means a person authorized, expressly or impliedly, by any person holding a permit issued under this article for a minor event, to provide goods or services to the patrons of the minor event.

"Temporary structures" includes tents, booths, stages, viewing stands, risers, rides, games, portable toilets and similar structures set up on the grounds for an event.

(Added by Ord. 99-05)

Sec. 28-11.2 Applicability.

(a) This article shall apply to any lease, license, permit or agreement entered into by the city for the use of all or any portion of the grounds of City Hall and the Honolulu Municipal Building for the purposes of conducting an event.

(b) This article shall not apply to:

- (1) Any easement, including any utility easement;
- (2) Any temporary license for the purposes of permitting the repair or renovation of or additions to City Hall, the Honolulu Municipal Building, the City Hall Annex, the Civic Center parking facility or the Civic Center child care facility;
- (3) Any peddling activity by any peddler duly licensed pursuant to HRS Section 445-141;
- (4) Any handbilling activity;
- (5) Any display permitted under the city's Honolulu city lights program;
- (6) Any food vending concession awarded by the city;
- (7) The city-sponsored people's open market program;
- (8) Any gathering held exclusively by a governmental entity or a combination of governmental entities; or

- (9) Any gathering of persons for the purpose of exercising first amendment rights, involving no fee for participation, and involving no sales or solicitations for the sale of any product or service, in the area bounded by:
- (A) City Hall;
 - (B) The public sidewalks immediately abutting South King Street and Punchbowl Street;
 - (C) The public walkway along the eastern (diamond head) wall of City Hall and connecting with the public sidewalk immediately abutting South King Street; and
 - (D) The public walkway connecting the western (ewa) entrance of City Hall with the public sidewalk immediately abutting Punchbowl Street.

This subsection shall not be construed to preclude the holder of a lease entered into under Section 28-11.4 from charging a permitted fee for persons subject to paragraphs (3) and (4).

(Added by Ord. 99-05)

Sec. 28-11.3 Terms and conditions.

- (a) The holder of a permit for a minor event shall be subject to the following conditions:
- (1) The permittee shall not prevent any person from having access to, and shall not charge a fee to any person for access to, City Hall, the Honolulu Municipal Building, the City Hall Annex, the Civic Center parking facility or the Civic Center child care facility.
This condition shall not preclude the designation of parking stalls or areas within the Civic Center parking facility for the exclusive use of certain persons or classes of persons or the charging of a fee for parking within the facility to the extent allowed under the minor permit. This condition shall also not preclude the city or the operator of the Civic Center child care facility from closing a building on the grounds of City Hall and the Honolulu Municipal Building to the public as permitted by law or by lawful order of the city official in charge of the city building or, for the Civic Center child care facility, at the direction of the operator of the facility.
 - (2) The permittee shall not prevent any person from having use of, nor shall the permittee charge a fee to any person for use of, any public walkway for purposes of crossing the grounds or for purposes of access to any of the facilities enumerated in subdivision (1), except that the permittee may prevent a person from using such a public walkway to allow for the setting up and breaking down of stages, tents and other permitted temporary structures.
 - (3) The permittee shall not permit any contiguous area of more than 1,000 square feet of the grounds to be partitioned, fenced, roped or cordoned off or otherwise demarcated for purposes of charging a fee to persons entering the partitioned, fenced, roped, cordoned or otherwise demarcated area.
- (b) The holder of a lease or permit for a major or minor event and any person holding an exempt event shall abide by any applicable administrative rules of any city agency pertaining to the use or lease of the grounds of City Hall and the Honolulu Municipal Building, or any portion thereof.
- (c) The holder of a lease or permit for a major or minor event shall be subject to the following conditions:
- (1) The lessee or permittee shall provide adequate security personnel and sanitation facilities during, and adequate cleanup following, the event and shall pay the cost of any soil aeration or grassing necessitated by the use of the grounds by the lessee or permittee and any patrons, volunteers or employees of the lessee or permittee.
 - (2) The use of the grounds shall conform to the diagram and statements contained in the lessee's or permittee's application.
 - (3) At least one of the persons designated by the lessee or permittee to be in charge of the grounds shall be present on the grounds at all times during their active use.
 - (4) The lessee or permittee shall have such insurance naming the city as an additional insured, or post such bond with the city, as shall protect the city from any reasonably foreseeable injury to persons or property resulting from the lessee's or permittee's use of the grounds, including the acts and omissions of the lessee or permittee, any sublessee or subpermittee, any officer, director, employee or agent of the lessee or permittee or of any sublessee or subpermittee, relating to the event, including acts and omissions during the event, while setting up for the event, while breaking down temporary structures after the event, or while cleaning up after the event. The coverage and terms of such insurance or bond shall be subject to the approval of the director of budget and fiscal services. This requirement may be waived for a minor event if the director of budget and fiscal services determines that the risk of injury to persons or property reasonably foreseeable to result from the event is negligible.
 - (5) The lessee shall pay a fee of \$200.00 to cover the city's costs of processing and administering the lease for a major event and the permittee shall pay a fee of \$100.00 to cover the city's cost of processing and administering the permit for a minor event.
 - (6) For no event shall the active use of the grounds extend beyond three consecutive days.
- (d) Any lease or permit to which this article applies may include conditions, in addition to those enumerated in subsections (a) through (c), prescribed by the director approving the lease or permit.
- (e) Any lessee holding a major event shall be subject to the following additional condition:
The lessee shall comply with the same conditions applicable to the holder of a permit for a minor event under subdivisions (a)(1) and (2), provided that the lessee may require persons seeking access to any facility described in subdivision (a)(1) or crossing the grounds for the purposes described in subdivision (a)(2) to move actively toward their destination or actively across the grounds.
- (f) The violation of any condition of a lease or permit to which this article applies shall be grounds for termination of the lease or permit, nonissuance of a lease or permit in the future to the lessee or permittee or the imposition of such other penalty as may be prescribed in the lease or permit.

(Added by Ord. 99-05; Am. Ord. 01-21)

Sec. 28-11.4 Permitted private uses of grounds.

- (a) Notwithstanding the provisions of Article 2, the city shall not enter into any lease or permit for the use of all or any portion of the grounds of City Hall and the Honolulu Municipal Building for any event to which this article applies, or otherwise grant any license or permit for the exclusive use of the grounds of City Hall and the Honolulu Municipal Building, or any portion thereof for any event to which this article applies, except as provided in subsections (b) and (c). No person may hold a major or minor event without obtaining a lease or permit pursuant to this article.
- (b) The director of customer services may, upon review of an application submitted pursuant to Section 28-11.5, issue a permit, on the terms and conditions applicable to minor events under Section 28-11.3, to any person to hold a minor event.
- (c) The director of budget and fiscal services may award a lease on the terms, conditions and rentals applicable to major events under Section 28-11.3 and approved by the corporation counsel as to form and legality, for a private organization holding a major event on the grounds and meeting all of the following criteria:
 - (1) The private organization is a not-for-profit corporation or association chartered or otherwise authorized to do business in the State of Hawaii for charitable purposes.
 - (2) The purposes for which the private not-for-profit corporation or association is organized provide direct benefits to the people of the city.
 - (3) The purposes for which the not-for-profit corporation or association is organized fall into at least one of the following categories:
 - (A) Social services for the poor, the aged or the youth of the city;
 - (B) Health services, including services for those with physical and/or emotional/mental disabilities;
 - (C) Educational, manpower and/or training services; or
 - (D) Services to meet a definitive cultural, social or economic need within the city not being met by any other private organization.
- (d) Any lease for a major event entered into under, or permit for a minor event issued under, this article shall not be subject to the public bidding requirements of Articles 2 and 3.
- (e) In determining whether to enter into a lease or grant a permit under this section, and in conditioning such a lease or permit, the director of budget and fiscal services or the director of customer services, as the case may be, shall consider the potential effects of the proposed event on normal city functions.

(Added by Ord. 99-05)

Sec. 28-11.5 Application procedure.

- (a) Any person desiring to enter into a lease to hold a major event on the grounds of City Hall and the Honolulu Municipal Building shall submit an application to the director of budget and fiscal services at least 30 days in advance of the proposed event. Any person desiring a permit to hold a minor event on the grounds shall submit an application to the director of customer services at least 15 days in advance of the minor event. The application shall be accompanied by the applicable fee and shall include the following:
 - (1) If the application is for a major event, a statement of the person's qualifications to enter into a lease under this article and such documentation thereof as may be required by the director of budget and fiscal services.
 - (2) A statement of the portion of the grounds of City Hall and the Honolulu Municipal Building that will be used for the major or minor event.
 - (3) A statement of the duration of the proposed lease or permit and the dates and hours during which the grounds will be actively used and during which setting up and breaking down of temporary structures will be taking place.
 - (4) A diagram showing the proposed location of any temporary structures, as well as any areas proposed to be partitioned, fenced, roped, cordoned or otherwise demarcated for the purpose of charging a fee, or partitioned, fenced, roped or cordoned for any other purpose, including the name of any sublessee or subpermittee that will be using any temporary structure.
 - (5) A statement of the anticipated patronage of the event and the media that will be used to attract patronage.
 - (6) A statement as to proposed security, sanitation and cleanup measures and personnel for the event.
 - (7) A general statement of the forms of entertainment to be provided, if any, and whether sound amplification will be utilized.
 - (8) A statement of all fees to be charged by the lessee or permittee or any sublessee or subpermittee, including any entry fees, and of what is to be received by event patrons in exchange for payment of the fees.
 - (9) A statement of whether any of the net proceeds from the fees charged will be turned over to any person or persons other than the lessee or permittee and a statement as to the tax-exempt or charitable status of such person or persons.
 - (10) A designation of a natural person or persons who will be in charge of the grounds during the event.
 - (11) The address of the applicant, and the name and address of the natural person preparing the application.
 - (12) A statement by the applicant as to whether it shall meet the requirement of Section 28-11.3(c)(4) by providing liability insurance or by posting a bond and providing such proof of insurance or bond as may be required by the director of budget and fiscal services for a major event, or by the director of customer services in consultation with the director of budget and fiscal services for a minor event. If an applicant for a minor event permit seeks a waiver of the requirement, the applicant shall so state and shall state the basis for the waiver.
 - (13) A statement as to any insurance that will be provided by any sublessee or subpermittee.
 - (14) Any additional information deemed necessary by the director of budget and fiscal services and the director of customer services.
- (b) The director of budget and fiscal services and the director of customer services shall prescribe the form of the applications made to each of them, respectively, pursuant to subsection (a).
- (c) The director to whom the application is submitted shall notify the applicant within 10 working days of receipt of a completed application as to whether the application is granted, granted with conditions, or denied. The decision of the director shall be final.

(Added by Ord. 99-05)

Sec. 28-11.6 Copies of permit and lease applications to be provided to council—Notice of approval.

Within three working days of receipt of an application to enter into a lease or for the issuance of a permit under Section 28-11.5, the director of budget and fiscal services or the director of customer services, whichever received the application, shall provide a copy of the application to the council. Within three working days of final approval of an application, the director giving the final approval shall give notice of the approval to the council and shall include in the notice any special conditions imposed under the lease or permit. (Added by Ord. 99-05)

Article 12. Telecommunications Facilities

Sections:

- 28-12.1 Definitions.**
- 28-12.2 Leases for telecommunications facilities on city property.**
- 28-12.3 Telecommunication license fees.**
- 28-12.4 Colocation of certain wireless communication facilities.**

Sec. 28-12.1 Definitions.

For the purposes of this article, the following terms shall have the following meanings, unless it is apparent from the context that another meaning is intended:

“Antenna” means any system of wires, poles, rods, reflecting discs, dishes or similar devices used for the transmission or reception of wireless communications services signals.

“Aggregate footprint” means the area of space occupied by the telecommunications facilities, measured in square feet, including areas of exclusive use by the telecommunications carrier, but excluding areas for coaxial cable runs, conduit paths, utility and access easements.

“City property” means all real property now or hereafter owned by the City and County of Honolulu, whether in fee ownership or other interest.

“Department” means the department of information technology.

“Telecommunications facilities” means the plant, equipment and property, including but not limited to pedestals, antennas, electronics, and other appurtenances used to transmit, receive, distribute, provide or offer telecommunications.

“Type I Telecommunications Facility” means any telecommunications facility where the entire telecommunications facility is attached to or supported by any permanent building or other structure of the city located on the property on which the telecommunications facility is also located.

“Type II Telecommunications Facility” means any telecommunications facility that does not meet the definition of “Type I Telecommunications Facility.”

“Telecommunications service” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

“Wireless communications services facility” means a privately owned cellular, paging or broadband personal communications services facility that includes an antenna.

(Added by Ord. 05-020; Am. Ord. 06-22)

Sec. 28-12.2 Leases for telecommunications facilities on city property.

- (a) After July 1, 2005,* [*Editor’s Note: “July 1, 2005” is substituted for the “effective date of this ordinance.”] any private person or entity desiring to locate a telecommunications facility on city property shall submit an application for a lease to the department on a form prescribed by the department. The application shall include conceptual plans and specifications for the proposed facility, specifically setting forth: (1) the proposed height and area of the various components of the facility, including the proposed location of any cables, wires, and conduits to serve the facility, and (2) the proposed methods and treatments to be used to minimize the visual impacts of the proposed telecommunications facility to the greatest practicable extent.
- (b) The department shall consult with the city department or agency currently using the property in order to determine whether the proposed telecommunications facility would unduly interfere with the current use of the property. The department shall also consult with the department of the corporation counsel to determine whether there exist any legal restrictions that would preclude the use of the city property for the proposed facility and whether there exist significant liability concerns relating to the proposed facility.
- (c) Notwithstanding any provision of this chapter, and without the necessity of competitive bidding, if the department determines, after conducting the consultations prescribed in subsection (b), that it would be in the best interests of the city to lease the city property to the applicant, it may negotiate the terms of a lease with the applicant and submit the lease to the council for its approval, approval with modifications or conditions, or disapproval, by resolution. The department shall not authorize the use of any city property if the use of the property will compromise public safety.
- (d) Unless otherwise authorized by the council, the monthly rental for the use of city real property for a telecommunications facility shall be as follows:

Type I Telecommunications Facilities:

<u>Aggregate Footprint</u>	<u>Monthly Rental Amount</u>
75 square feet or less	\$1,000
Greater than 75 but less than or equal to 125 square feet	1,200
Greater than 125 but less than or equal to 175 square feet	1,425
Greater than 175 but less than or equal to 225 square feet	1,650

Greater than 225 but less than or equal to 275 square feet	1,875
Greater than 275 but less than 325 square feet	2,100
325 square feet or more	2,325

Type II Telecommunications Facilities:

<u>Aggregate Footprint</u>	<u>Monthly Rental Amount</u>
475 square feet or less	\$1,000
Greater than 475 but less than or equal to 525 square feet	1,200
Greater than 525 but less than or equal to 575 square feet	1,425
Greater than 575 but less than or equal to 625 square feet	1,650
Greater than 625 but less than or equal to 675 square feet	1,875
Greater than 675 but less than 725 square feet	2,100
725 square feet or more	2,325

The department may recommend and the council may authorize a different monthly rental amount when: (i) the city will be required to take measures to mitigate negative aesthetic aspects of the facility or minimize the potential threat of the facility to public safety; (ii) in instances where the department determines that the monthly rental amount is not feasible or equitable; or (iii) in instances where the department accepts property or services in lieu of payment if approved by the city department or agency currently using the property.

- (e) For purposes of this section an entity is not a "private" entity if it is an agency or department of the city, the State of Hawaii, or the United States, or if the telecommunications facility to be situated on city real property is to be owned by or used exclusively for the benefit of the city, the State of Hawaii, or the United States.
- (f) This section shall not apply to a telecommunications facility to be situated on land of the board of water supply or any semiautonomous agency of the city.
- (g) The term of the lease shall be subject to Article 4.
- (h) The lease shall provide for the applicant to post bond in a sum sufficient to ensure that the proposed telecommunications facility will be completed as planned and may require a reasonable deposit to insure that the facility is adequately maintained.
- (i) The council may impose such other reasonable conditions relating to safety or aesthetics, as it may deem appropriate.
- (j) Approval of the lease by the council shall not constitute a waiver of any zoning, subdivision, state land use, special management area, building code or other legal requirements applicable to the telecommunications facility. The lease shall allow the lessee to terminate the lease if any permit or approval necessary for the construction or operation of the facility is denied or revoked. Following council approval of the lease terms, the director of budget and fiscal services may award the lease subject to those terms.
- (k) The department may adopt rules having the force and effect of law, pursuant to HRS Chapter 91, for the implementation of this article.
- (l) This section shall not apply to any license, easement, concession or other right of occupancy for the following:
 - (1) Telecommunications cables, wires, conduits, ducts, poles, anchors, or wire line telecommunications equipment cabinets and associated appliances and equipment on city real property, provided that no related telecommunications facilities are situated on the property;
 - (2) The temporary use of city property as a staging area for the construction of telecommunications facilities on real property not under the ownership or control of the city; or
 - (3) The placement of a pay telephone, as defined in Hawaii Administrative Rules Section 6-82-3, and related cables, wires, conduits, ducts, or other equipment on city property.
 - (4) The placement of telecommunications facilities on city property where the deed or other use restrictions preclude the city from entering into a lease agreement for the property.

(Added by Ord. 05-020; Am. Ord. 09-23)

Sec. 28-12.3 Telecommunication license fees.

Unless otherwise authorized by the council, the monthly license fee for the use of city real property for a telecommunications facility shall be as follows:

Type I Telecommunications Facilities:

<u>Aggregate Footprint</u>	<u>Monthly Rental Amount</u>
75 square feet or less	\$900.00
Greater than 75 but less than or equal to 125 square feet	1,080.00
Greater than 125 but less than or equal to 175 square feet	1,282.50
Greater than 175 but less than or equal to 225 square feet	1,485.00
Greater than 225 but less than or equal to 275 square feet	1,687.50
Greater than 275 but less than 325 square feet	1,890.00
325 square feet or more	2,092.50

Type II Telecommunications Facilities:

<u>Aggregate Footprint</u>	<u>Monthly Rental Amount</u>
475 square feet or less	\$900.00
Greater than 475 but less than or equal to 525 square feet	1,080.00
Greater than 525 but less than or equal to 575 square feet	1,282.50
Greater than 575 but less than or equal to 625 square feet	1,485.00
Greater than 625 but less than or equal to 675 square feet	1,687.50
Greater than 675 but less than 725 square feet	1,890.00
725 square feet or more	2,092.50

The department may recommend and the council may authorize a different monthly rental amount when: (i) the city will be required to take measures to mitigate negative aesthetic aspects of the facility or minimize the potential threat of the facility to public safety; (ii) in instances where the department determines that the monthly rental amount is not feasible or equitable; or (iii) in instances where the department accepts property or services in lieu of payment if approved by the city department or agency currently using the property.

(Added by Ord. 09-23)

Sec. 28-12.4 Colocation of certain wireless communication facilities.

All leases or licenses to private persons or entities for the purposes of situating a privately owned wireless communications services facility on city property shall include appropriate provisions to ensure that the facility shall be, to the extent practicable, capable of supporting one or more antennas owned or used by private persons or entities other than the lessee or licensee. (Added by Ord. 05-020; Am. Ord. 09-23)