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SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

Historical Note: This subchapter is based substantially on chapter 2 of the rules of the civil service commission.

§1-1 Purpose of chapter; statement of policy.

This chapter governs procedures before the civil service commission under chapter 76, HRS, and shall be construed to effectuate the purpose of the chapter and to secure the just and efficient determination of every proceeding.

[Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-2 Authority.

These rules govern practice and procedure before the civil service commission of the City and County of Honolulu under civil service law, chapter 76, HRS as modified by chapter 89, HRS; hawaii administrative procedure act, chapter 91, HRS; chapter 92, HRS; and such other related acts as may now or hereafter be administered by the civil service commission. The civil service commission shall serve as an appellate body. Matters of policy, methodology, and administration are left to the determination of the director. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-3 Construction of rules.

These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every proceeding. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-4 Limitation of jurisdiction.

Where the terms of collective bargaining agreements pursuant to chapter 89, HRS, conflict with these rules the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9(d), HRS. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-5 Procedure and terms.

- (a) Statutory terms. The terms used in rules promulgated by the commission pursuant to powers granted by statute shall have the meaning defined by such statute, unless otherwise indicated by the context.
- (b) Terms defined by rule. A rule or regulation that defines a term without express reference to the statute or to these rules or to a portion thereof, defines such terms

for all purposes as used both in the statute and in these rules, unless otherwise indicated by the context.

- (c) Use of number. Words importing the singular number may extend and be applied to several persons or things and words importing the plural may include the singular. [Eff August 11, 2002] (Auth: HRS §91-2) (Imp: HRS §91-2)

§1-6 Definitions.

As used in this chapter, unless a different meaning clearly appears in the context:

"Appointing authority" means a department head or designee having the power to make appointments or make changes in the status of employees.

"Chairperson" means the chairperson of the civil service commission.

"Commission" means the civil service commission.

"Director" means the director of the department of human resources.

"Hearing" means any proceeding governed by sections 91-8 and 91-9, HRS.

"Meeting" means the convening of the commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the commission has supervision, control, jurisdiction, or advisory power.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in a proceeding.

"Presiding officer" means, with respect to proceedings, the chairperson, and includes any member of the commission designated as such, or such other persons authorized by law to conduct hearings.

"Person" means or includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than governmental agencies.

"Proceedings" means the commission's determination of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the commission's jurisdiction, initiated by a filing or submittal or request or a commission's notice or order. It shall include proceedings involving the adoption, amendment or repeal of any rule or regulation of the commission, whether initiated by commission order or notice, or by petition of an interested person. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-7 The Commission.

- (a) Office. The office of the commission is at Honolulu, Hawaii. All communications to the commission shall be addressed to Civil Service Commission, City and County of Honolulu, Honolulu, Hawaii 96813.
- (b) Hours. The office of the commission will be open during regular office hours unless otherwise provided by statute or executive order.
- (c) Meetings. The commission may meet and exercise its powers in any part of the City and County of Honolulu.
- (1) Open meetings. All meetings of the commission, except executive meetings and meetings governed by sections 91-8 and 91-9, HRS, shall be open to the public.
 - (2) Executive meetings. The commission may hold an executive meeting, closed to the public, upon an affirmative vote, taken at an open meeting, of two thirds of the members present. The vote of each member on the question

of holding a meeting closed to the public and the reason for holding such a meeting shall be recorded and entered into the minutes of the meeting. A meeting closed to the public may be held only for one or more of the purposes listed in section 92-5, HRS.

- (3) Chance meetings. The rules governing meetings shall not apply to any chance meeting, as defined by section 92-2, HRS, at which matters relating to official business are not discussed. No chance meeting or electronic communication shall be used to circumvent the spirit or requirements of the meetings provisions to make a decision or to deliberate toward a decision upon a matter over which the commission has supervision, control, jurisdiction or advisory power.
- (4) Special meetings. Special meetings of the commission for the transaction of its business may be held at any time and place as scheduled by the commission.
- (5) Emergency meetings. If the commission finds that an imminent peril to the public health, safety or welfare requires a meeting in less time than is provided for in paragraph (6), the commission may hold an emergency meeting under the conditions set forth in section 92-8, HRS. In addition, if the commission finds that an unanticipated event requires it to take action within less time than is provided for in paragraph (6), the commission may hold an emergency meeting as permitted under section 92-8(b), HRS.
- (6) Notice.
 - (A) The commission shall give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance. The content, filing and changes to the notice and agenda shall be governed by the provisions in section 92-7, HRS.
 - (B) Notice to parties. For hearings governed by sections 91-8 and 91-9, HRS, all parties shall be given notice of the hearing as required by law and provided for in these rules. In addition, the commission shall maintain a list of persons who have requested notification of meetings. The commission shall mail a copy of the notice to all persons on the list.
- (7) Construction. The provisions requiring open meetings shall be liberally construed and the provisions providing for exceptions to open meeting requirements shall be strictly construed against closed meetings.
- (d) Quorum and number of votes necessary to validate acts. A majority of all members to which the commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the commission is entitled shall be necessary to make valid any action of the commission.
- (e) Minutes. The commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed and the views of the participants. The minutes shall meet all the requirements provided in section 92-9, HRS.
- (f) Administrative.
 - (1) The chairperson of the commission shall be responsible for the administration functions of the commission.
 - (2) Authentication of commission action. All decisions, orders and other actions of the commission shall be signed by the chairperson or the presiding officer acting in such proceeding. Official copies of decisions, orders and other

commission actions may be promulgated under the signature of the chairperson of the commission or the chairperson's delegate.

- (g) Submittals and requests. All documents required to be filed with the commission shall be filed in the office of the commission within such time limits as prescribed by laws, rules of the commission or order of the commission. Requests for public information, copies of official documents or opportunity to inspect public records may be made in writing to the commission's office or in person at said office. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-8 Delegation of administrative duties

- (a) The commission may delegate to any competent and qualified individual such power or authority vested in the commission as it deems reasonable and proper for the effective administration of chapter 76, HRS, except the power to make, amend or repeal rules and regulations.
- (b) Hearing officer. The commission may, by written resolution adopted by a majority of the members to which it is entitled, appoint a competent and qualified disinterested person to act as its hearing officer. The hearing officer shall hear the matter in the same manner as if it were before the commission and, upon the conclusion of the hearing, shall transmit to the commission a record of the hearing, including a recording or transcript and a summary of evidence taken at said hearing. After review of the testimony and evidence, a majority of the members to which the commission is entitled shall render a decision in accordance with section 91-11, HRS. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-9 Government records.

- (a) Files of the commission. The term "government records" as used in this part is defined as in section 92F-3, HRS, and shall include all rules, regulations, written statements of policy or interpretations formulated, adopted or used by the commission, all petitions of appeal, opinions and orders, written testimony, minutes of meetings of the commission and any other material on file in the office of the commission unless accorded confidential treatment pursuant to law or the rules of the commission.
- (b) Inspection of government records. All government records which are required to be disclosed pursuant to section 92F-12, HRS, will be available for inspection in the office of the commission during established office hours unless public inspection of such records is in violation of any law or rule. Nothing in this rule shall be construed to prevent the corporation counsel from raising any and all objections to the production of government records that are subject to discovery or subpoena under any rule or order of the court. The corporation counsel is authorized to raise objections and defenses pertaining to the discovery and subpoena of the commission's records and withhold production and disclosure of said documents pending a final court order.
- (c) Copies of government records. Government records which are required to be disclosed pursuant to section 92F-12, HRS, that are printed or reproduced by the commission shall be given to any person requesting the same and paying the fees established by the commission or by law.
- (d) Requests. Requests for public information, for permission to inspect government records or for copies of government records shall be handled expeditiously. Said government records, however, will not be released for review or copying without the approval of the chairperson or the chairperson's delegate.

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- (e) Denial of inspection. Any person denied access to inspect government records or to copies of government records may apply to the circuit court of the circuit wherein the government record is found for an order permitting access to inspect government records or to copies of government records. [Eff August 11, 2002] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 2

PROCEEDINGS BEFORE THE COMMISSION

§1-10 General proceedings.

The commission may, on its own motion or upon the petition of any interested person or agency of the Federal, State or County government, hold such proceedings as is consistent with sections 76-14 and 76-47, HRS. Procedures to be followed by the commission shall, unless specifically prescribed in these rules or by the hawaii administrative procedure act or by any other statute, be such as in the opinion of the commission will best serve the purpose of such proceeding.

[Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-11 Appearances and practices before the commission.

- (a) Appearances before the commission. A public employee may appear in such employee's own behalf; an employee organization may be represented by its duly designated representative; and the director or appointing authority may appear on their own behalf.
- (b) Representation. In any proceeding under these rules, the director, appointing authority, or employee may be represented by an attorney or any other individual authorized, in writing, to act in a representative capacity.
- (c) Validation of authority. When an individual acting in a representative capacity appears in person or signs a paper in practice before the commission, the personal appearance or signature of such individual shall constitute a representation to the commission that, under the provisions of these rules and the law, the individual is authorized and qualified to represent the particular person on whose behalf such individual acts. The commission may at any time require individuals transacting business with the commission in a representative capacity to show to the commission their written authorization to act in such capacity.
- (d) Bar to appearance.
 - (1) Former commission association. No individual who has been associated with the commission as a member, officer, employee or counsel shall be permitted to appear before the commission in behalf of or to represent in any manner any party in connection with any proceeding or matter that such individual has handled or passed upon while associated in any capacity with the commission.
 - (2) Limitations of assistance from barred persons. No person or agency appearing before the commission in any proceeding or matter shall, in relation thereto, knowingly accept assistance from and compensate any individual who would be barred by this subsection.

- (3) Written consent to appear: No person who has been associated with the commission as a member, officer, employee or counsel thereof shall be permitted to appear before the commission in behalf of, or to represent in any manner, any person or agency in connection with any proceeding or matter that was pending before the commission at the time of such person's association, unless written consent of the commission shall first have been obtained, upon a verified showing that such individual did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during such person's association with the commission.
- (4) One year limitation. This subsection shall not apply to any individual or agency who has terminated association with the commission for a period of one year. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-12 Disqualification of commissioner or hearing officer.

Any party to a hearing may, up to five days before the proceeding, file an affidavit that one or more of the commissioners or a hearing officer has a personal bias or prejudice. The commissioner against whom the affidavit is so filed may answer the affidavit or may file a disqualifying certificate with the commission. If the commissioner or hearing officer chooses to answer the affidavit, the remaining commissioners shall decide by a majority of all the members to which the commission is entitled whether that commissioner or hearing officer should be disqualified from proceeding therein. Every such affidavit shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed at least five days before the hearing, or good cause shall be shown for the failure to file it within such time. Any commissioner or hearing officer may be disqualified by filing with the chairperson a certificate acknowledging inability for any reason to preside with impartiality in the pending hearing. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-13 Consolidation.

The commission, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-14 Filing of documents.

- (a) Time and place. All requests, appeals, pleadings, submittals, petitions, reports, maps, exceptions, briefs, memoranda and other papers required to be filed with the commission in any proceeding shall be filed at the office of the commission within the time limits prescribed by law, the rules of the commission or by order of the commission. The date on which the papers are received, if hand delivered, or postmarked, if delivered by mail, shall be regarded as the date of filing.
- (b) Form. All requests and appeals filed with the commission shall be written in ink, typewritten, mimeographed or printed; shall be plainly legible; and shall be on strong, durable paper no larger than 8-1/2 x 11 inches in size, except that maps, charts,

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tables and other like documents may be larger, folded to the size of the papers to which they are attached.

- (c) Certification. All documents must be signed in ink by the party signing the same or by such party's duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that such person has read the document; that to the best of the person's knowledge, information and beliefs, every statement contained therein is true and no such statement is misleading; and that it is not interposed for delay. The commission may prescribe specific forms or formats upon which the requests and appeals must be filed.
- (d) Copies. Unless otherwise specifically provided by a particular rule, regulation or order of the commission, an original and eight copies of all papers shall be filed.
- (e) Identification. All documents filed by any person or agency in any proceeding shall state on the first page thereof the name, mailing address and telephone number, if any, of the individual or individuals who may be served with any documents filed in the proceeding. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2, 91-6, 91-8) (Imp: HRS §§76-14, 76-47, 91-2, 91-6, 91-8)

§1-15 Amendment of documents and dismissal.

If any document filed in a proceeding is not in substantial conformity with the applicable rules of the commission as to contents thereof, or is otherwise insufficient, the commission may, on its own motion or on motion of any party, strike such document or require its amendment. If amended, the document shall be effective as of the date of receipt of the amendment. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2, 91-6, 91-8) (Imp: HRS §§76-14, 76-47, 91-2, 91-6, 91-8)

§1-16 Retention of documents.

All documents filed with or presented to the commission shall be retained in the files of the commission. The commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2, 91-6, 91-8) (Imp: HRS §§76-14, 76-47, 91-2, 91-6, 91-8)

§1-17 Computation of time.

In computing any period of time prescribed or allowed by these rules, the day of the act, event or default, after which the designated period of time is to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in the State of Hawaii, in which event the period runs until the next day which is neither a Saturday, Sunday nor a holiday. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47) (Imp: HRS §§76-14, 76-47)

§1-18 Continuances or extensions of time.

Whenever a person or agency has a right or is required to take action within a period prescribed or allowed by these rules, the chairperson upon the filing of a proper motion or request by the person or agency, may permit the act to be done after expiration of the specified period if such delinquency is clearly shown to have been the result of excusable neglect. Such request must be filed no later than ten days prior to the hearing date set for the appeal and be accompanied by an affidavit or other evidence or documents supporting the request for an extension or continuance. This provision shall not apply to the twenty day time period in which the petition of appeal must be filed with

the commission as required under section 1-35. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2) (Imp: HRS §§76-14, 76-47, 91-2)

§1-19 Service of process.

- (a) By whom served. The commission shall cause to be served all orders, notices and other papers issued by it, together with any other papers that is required by law to serve. All other papers shall be served by the parties filing them.
- (b) Upon whom served. All papers served by either the commission or any party shall be served upon all parties or their counsel. Any counsel entering an appearance subsequent to the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.
- (c) Service upon parties. The final order, and any other paper required to be served by the commission upon a party and a copy shall be furnished to counsel of record.
- (d) Method of service. Service of papers shall be made personally or, unless otherwise provided by law, by first-class mail.
- (e) When service complete. Service upon parties, other than the commission, shall be regarded as complete by mail upon deposit in the United States mail, properly stamped and properly addressed to the parties involved. [Eff August 11, 2002](Auth: HRS §91-2) (Imp: HRS §91-2)

§1-20 Commission decision.

All final orders, opinions or rulings entered by the commission in the proceeding and rules promulgated by the commission shall be served upon the parties participating in the proceeding by first-class mail or personal delivery by the commission. Copies of such material shall be available for public inspection in the office of the commission or may be obtained upon request and upon payment of reasonable fees, if any. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-2, 91-12) (Imp: HRS §§76-14, 76-47, 91-2, 91-12)

SUBCHAPTER 3

RULES APPLICABLE TO RULEMAKING PROCEDURES

§1-21 Initiation of rulemaking proceedings.

- (a) Motion by commission. The commission may, at any time on its own motion, initiate proceedings for the adoption, amendment or repeal of any rule of the commission. Procedures to be followed in rulemaking shall be as set forth in rules of the commission and the applicable statutes.
- (b) Petition by person or agency. Any interested person or agency may petition the commission for the adoption, amendment or repeal of any rule of the commission. Petitions for rulemaking filed with the commission will become matters of public record.
 - (1) Form and content. Petitions for rulemaking shall conform to the requirements of section 14 and shall contain the name, address and telephone number of each petitioner; the signature of each petitioner; a draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; a statement of the petitioner's interest in the subject matter; and a statement of the reasons in support of the proposed rule, amendment or repeal.

§1-21

- (2) Commission action. The commission shall, within thirty days after the filing of the petition for the adoption, amendment or repeal of any rule of the commission, place the petition on the agenda for its next scheduled public meeting. At the close of the public meeting the commission shall either deny the petition or initiate rulemaking proceedings as provided for in these rules.
- (3) Denial of petition. Any petition that fails in material respect to comply with the requirements herein or that fails to disclose sufficient reasons to justify the institution of rulemaking proceedings will be denied by the commission. The commission shall notify the petitioner in writing of such denial, stating the reasons therefore. Denial of a petition shall not operate to prevent the commission from acting, on its own motion, on any matter disclosed in the petition. Petitioner may seek a review of said denial through the Circuit Court pursuant to the administrative procedure act and applicable rules of court and statutes.
- (4) Acceptance of petition. If the commission determines that the petition is in order and that it discloses sufficient reasons in support of the petition the commission shall initiate the rule-making proceedings as provided in sections 23 through 28. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47) (Imp: HRS §§76-14, 76-47)

§1-22 Notice of public hearing.

- (a) Publication and mailing. When, pursuant to a petition or upon its own motion, the commission proposes to adopt, amend or repeal a rule or regulation, a notice of proposed rulemaking shall be given in accordance with the provisions of section 91-3, HRS including being mailed to all persons or agencies who have made timely written requests for advance notice of the commissioner's rulemaking proceedings. All such notices shall be given at least thirty days prior to the date set for public hearing.
- (b) Form. A notice of the proposed adoption, amendment or repeal of a rule or regulation shall comply with the requirements specified in section 91-3, HRS. [Eff August 11, 2002] (Auth: HRS §91-3) (Imp: HRS §91-3)

§1-23 Conduct of hearing.

- (a) Presiding officer. The public hearing for the adoption, amendment or repeal of rules and regulations shall be heard before the commission and presided over by the chairperson of the commission or, in the chairperson's absence, by another member designated by the commission. The hearing shall be conducted in such a way as to afford to interested persons and agencies a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.
- (b) Continuance of hearing. Each such hearing shall be held at the time and place set in the notice of hearing but may at such time and place be continued by the presiding officer from day to day or to a later date or to a different place without notice other than the announcement thereof at the hearing.
- (c) Order of proceeding. At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

- (d) Submission of testimony. Witnesses shall, before testifying, state their name, address and whom they represent at the hearing, and shall give such other information as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the members of the commission or by any other representatives of the commission; cross-examination by persons or agencies shall be as permitted.
- (e) Oral and written presentation. All interested persons or agencies will be afforded an opportunity to submit data, views or arguments, orally or in writing, that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the presiding officer for good cause. An original and eight copies shall be filed when submitting written comments, recommendations or replies.
- (f) Transcript of the evidence. Unless otherwise specifically ordered by the commission, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, nine copies of the exhibits shall be submitted. [Eff August 11, 2002] (Auth: HRS §§91-2, 91-3) (Imp: HRS §§91-2, 91-3)

§1-24 Commission action.

The commission will consider all relevant comments and material of record before taking final action in a rulemaking proceeding. Final action should be taken within sixty days after the final public hearing, or the expiration of any extension period for submission of written comments or recommendations. [Eff August 11, 2002] (Auth: HRS §91-3) (Imp: HRS §91-3)

§1-25 Emergency rulemaking.

Notwithstanding the foregoing rules, if the commission finds that an imminent peril to public health, safety, or as otherwise specified in section 91-3, HRS requires adoption, amendment or repeal of a rule or regulation upon less than thirty days notice of hearing, and states in writing its reasons for such findings, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation. The commission shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper or general circulation in the State. [Eff August 11, 2002] (Auth: HRS §§91-3, 91-4) (Imp: HRS §§91-3, 91-4)

§1-26 Filing of rules.

The commission, upon adopting, amending or repealing a rule and approval by the mayor, shall file certified copies thereof with the city clerk. [Eff August 11, 2002] (Auth: HRS §91-4) (Imp: HRS §91-4)

§1-27 Taking effect of rules.

The filing and effective date of the rules shall be as prescribed by section 91-4, HRS. [Eff August 11, 2002] (Auth: HRS §91-4) (Imp: HRS §91-4)

§1-28

§1-28 Publication of rules.

The commission shall, as soon as practicable compile, index and publish all rules adopted by the commission and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years. [Eff August 11, 2002] (Auth: HRS §91-5) (Imp: HRS §91-5)

SUBCHAPTER 4

RULES APPLICABLE TO DECLARATORY RULINGS

§1-29 Petitions for declaratory rulings.

On petition of an interested person or agency, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or regulation or order of the commission.

- (a) Form and Contents. The petition shall conform to the requirements of section 14 and shall contain the name, address and telephone number of each petitioner; the signature of each petitioner; a designation of the specific provision, rule or order in question, together with a statement of the controversy or uncertainty involved; a statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition; a statement of the petitioner's position or contention; and a memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention.
- (b) Commission action. The commission shall, within a reasonable time after the petition for a declaratory ruling is filed with the commission, either:
 - (1) Deny the petition and issue a written decision stating the reasons for such denial;
 - (2) Issue a declaratory order on the matters contained in the petition; or
 - (3) Set the matter for hearing as provided in section 1-30.
- (c) Dismissal of Petition. The commission may, without notice or hearing, dismiss a petition for declaratory ruling that fails in material respect to comply with the requirements of this part. [Eff August 11, 2002] (Auth: HRS §91-8) (Imp: HRS §91-8)

§1-30 Request for hearing.

Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the commission may in its discretion order such proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall set forth in detail in the request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that such request for a hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts. In the event a hearing is ordered by the commission, section 91-9, HRS, shall govern the proceedings. [Eff August 11, 2002] (Auth: HRS §91-8) (Imp: HRS §91-8)

§1-31 Applicability or order.

In order disposing of a petition shall be applicable only to the factual situation described in the petition or set forth in the order. [Eff August 11, 2002] (Auth: HRS §91-8) (Imp: HRS §91-8)

§1-32 Declaratory ruling on commission's own motion.

Notwithstanding the other provisions of this part, the commission may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff August 11, 2002] (Auth: HRS §91-8) (Imp: HRS §91-8)

§1-33 Refusal to issue declaratory order.

The commission may for good cause, refuse to issue a declaratory order with specific reasons for such determination. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;
- (2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief;
- (3) The issuance of the declaratory order may affect the interests of the commission in a litigation that is pending or may reasonably be expected to arise; or
- (4) The matter is not within the jurisdiction of the commission. [Eff August 11, 2002] (Auth: HRS §91-8) (Imp: HRS §91-8)

SUBCHAPTER 5

RULES APPLICABLE TO APPEALS

§1-34 Standing to appeal.

- (a) The commission shall decide appeals from any action under chapter 76, HRS taken by the mayor, the director, an appointing authority, or a designee acting on behalf of one of these individuals, relating to:
 - (1) Recruitment and examination if the person has a "complaint" as defined under section 10-2 of the rules of the director of human resources;
 - (2) Classification and reclassification of a particular position if the person has a "complaint" as defined under section 10-2 of the rules of the director of human resources, and is an employee covered by chapter 76, HRS;
 - (3) Initial pricing of classes if the person has a "complaint" as defined under section 10-2 of the rules of the director of human resources, and is an employee covered by chapter 76, HRS; and
 - (4) Other employment actions under chapter 76, HRS including disciplinary actions and adverse actions for failure to meet performance requirements, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6, HRS if the person has a "complaint" as defined under section 10-2 of the rules of the director of human resources, and is an employee covered by chapter 76, HRS who is excluded from collective bargaining.

§1-34

- (b) It is required, however, that the person exhaust all internal complaint procedures, including administrative review and departmental complaint procedures, before an appeal is filed with the commission. In addition, the commission shall not act on an appeal if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency. The commission shall also not act on appeal if the appeal involves matters covered by the grievance procedures contained in each of the collective bargaining agreements. In these cases, the commission shall dismiss the appeal and defer to the other authority. The commission shall also not proceed on an appeal if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii Labor Relations Board. Finally, the commission shall use the conditions listed in section 76-41(b), HRS in reaching a decision on whether an action taken by the appointing authority based on a failure by the employee to meet the performance requirements of the employee's position is with or without merit. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47) (Imp: HRS §§76-14, 76-47)

§1-35 Filing of appeal.

- (a) Time. Any person who has standing to appeal shall file a petition of appeal to the commission within twenty calendar days after notice of the action was sent by the mayor, the director or appointing authority. For purposes of this rule the date notice of the action is sent shall be construed as either:
- (1) If the notice is mailed, the date the mayor, the director or appointing authority mails the notice by first class mail to the person's last known address; or
 - (2) If the notice is not mailed, the date the notice is hand delivered to the person.
- The petition of appeal shall be filed with the office of the commission during normal office hours. All petitions submitted to the commission beyond the twenty day period shall be deemed untimely and shall not be considered an appeal by the commission.
- (b) Form. The petition of appeal shall be filed on a form or in a format prescribed by the commission and the original and eight copies thereof shall be filed with the commission. The petition shall conform to the requirements of section 1-14.
- (c) Amendments. The petition of appeal maybe amended if the appellant is unable to ascertain the particular rule, regulation, statute or policy that was violated by the mayor, the director or appointing authority or state all material and relevant facts in support of the appeal at the time the petition of appeal is filed. The amended petition of appeal must be filed within 30 days of the filing of the original petition of appeal. For the purpose of the twenty day filing limitation the appeal shall be effective as of the date the original petition of appeal was filed.
[Eff August 11, 2002] (Auth: HRS §§76-14, 76-47) (Imp: HRS §§76-14, 76-47)

§1-36 Notice.

All parties shall be given written notice of the hearing in accordance with the provisions in sections 91-9 and 91-9.5, HRS [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-9, 91-9.5) (Imp: HRS §§76-14, 76-47, 91-9, 91-9.5)

§1-37 Appeal hearing.

- (a) General. An appeal shall be conducted as a contested case under chapter 91, HRS. The commission shall, upon receipt of an appeal, order the matter set for hearing. Any procedure in a contested case may be modified or waived by stipulation of the

- parties as specified in section 91-9, HRS; provided that waiver of any procedure includes procedural requirements of section 91-11, HRS.
- (b) Time and place. Hearing shall be held at the time and place set forth in the notice of hearing, but may at such time and place be continued from day to day or to a later day or to a different place without notice other than the announcement thereof by the presiding officer or hearing officer at the hearing.
 - (c) Nature of hearing. The nature of the hearing, whether open or closed, shall be governed by subsection 1-7(c).
 - (d) Before whom. Appeals shall be heard before the commission or a hearing officer duly appointed by the commission.
 - (e) Expenses. The commission may, by majority vote of the members to which it is entitled, provide for the sharing of specific expenses among the parties as permitted by section 76-47, HRS.
 - (f) Presiding officer. When a proceeding is conducted before the commission itself, the proceeding shall be presided over by the chairperson of the commission or, in the chairperson's absence, by the vice-chairperson.
 - (g) Powers of presiding officer. The presiding officer at a proceeding shall have authority to control the course of the hearing; to hold conferences open to the public on which they have had notice, for the settlement or simplification of issues; to administer oaths and affirmation; to grant application for and issue subpoenas; to take or cause depositions to be taken; to rule upon offers of proof and receive relevant evidence; to limit lines of questioning or testimony that are irrelevant, immaterial or repetitious; to rule upon all objections, procedural requests and motions that do not involve final determination of proceedings; to dispose of any other matter that normally and properly arises in the course of the proceeding; and to take all other actions authorized by chapters 76 and 91, HRS, Hawaii administrative procedure act, rules of the commission or by any other statute, that are deemed necessary to the orderly and just conduct of the hearing.
 - (h) Mediation. The commission by majority vote of the members to which it is entitled, or the hearing officer, if appointed, may require the parties to submit issues to mediation as provided in section 76-47, HRS.
 - (i) Prehearing motions and requests. All prehearing motions and requests shall be filed with the office of the commission and served on the opposing party by personal service or by first class mail no later than two weeks prior to the hearing date set by the commission for the appeal.
 - (j) Disqualification. No hearing officer or commissioner shall be assigned to serve in any proceeding who has any pecuniary interest in any matter or business involved in the proceeding; who is related within the first degree by blood or marriage to any party to the proceeding; or who has participated in an investigation preceding the institution of the proceeding or in a determination that it should be instituted or in the development of the evidence to be introduced therein.
 - (k) Record of the hearing. The record of the hearing shall be compiled in conformance with section 91-9(e), HRS. The commission will make provisions for stenographic record of the testimony, but it shall not be necessary to transcribe the record unless requested for purposes of prehearing or court review. Any person desiring a copy of the record of a hearing or any part thereof shall be entitled to the same upon written application to the commission and upon payments of reasonable costs thereof.
 - (l) Witnesses.
 - (1) Subpoenas. Subpoenas requiring the attendance of witnesses or the production of documentary evidence from any place within the State of Hawaii at any designated place of hearing may be issued by the presiding officer or

any designated member of the commission or by the hearing officer.

Application for subpoenas shall be made in writing to the commission or hearing officer. The application shall specify the particular documents or data desired and shall show their relevancy to the issues involved. Application shall be made at least five days prior to the hearing. If application is made at a later time, the commission may, in its discretion, issue subpoenas and/or continue the hearing or any part thereof. Enforcement of obedience to subpoenas issued by the commission and served pursuant to these rules will be effected by written application of any member of the commission to any circuit judge.

- (2) Fees. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and such fees and mileage shall be paid by the party at whose instance the witnesses appear. Fees for the depositions shall be paid by the party at whose instance the depositions are taken.
 - (3) Oath. Witnesses shall be placed under oath or affirmation prior to testifying.
- (m) Order of proceeding. At the commencement of the hearing, the presiding officer or hearing officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Such procedure, unless specifically prescribed in these rules or by the hawaii administrative procedure act or by any other applicable statute shall, in the opinion of the presiding officer or hearing officer, best serve the purpose of the hearing without prejudice to any party. Following the outlining of the procedures to be followed the commission or the hearing officer shall first consider all prehearing motions or requests filed by the parties.
- (n) Submission of testimony. All parties shall be given reasonable opportunity to offer testimony with respect to the matters relevant to the proceeding. Witnesses shall, before proceeding to testify, state their name, address and whom they represent at the hearing and shall give such information respecting their appearance relevant to the proceeding as the presiding officer or hearing officer may request. The presiding officer or hearing officer shall confine the testimony to the matters for which the hearing has been called, but need not apply the technical rules of evidence except as required by statute. Each witness shall be subject to questioning by members of the commission and by any representative of the commission. Each witness shall also be subject to cross-examination by the adverse party. Each party shall have the right to submit rebuttal evidence and rebuttal arguments.
- (o) Official notice of facts. The commission or hearing officer shall take notice of judicially recognizable facts and may take notice of generally recognizable technical or scientific facts within the commission's or hearing officer's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.
- (p) Additional evidence. At the hearing, the presiding officer or hearing officer may require the production of further evidence upon any issue.
- (q) Closing the hearing. After all the evidence has been presented, the commission or hearing officer shall give the parties opportunity to summarize. Within reasonable time after such final arguments have been completed and all requested memoranda submitted, the commission or hearing officer shall bring the matter to a close.
- (r) Proposed findings and conclusions. The commission or hearing officer shall permit parties to file proposed findings and conclusions, together with the reasons therefore at the close of the hearing or within such time as is extended at the discretion of the commission or hearing officer. Such proposal shall be in writing and shall contain

references to the record and to the authorities relied upon. Copies thereof shall be furnished to all parties.

- (s) Commission action. If the commission finds that the director or the appointing authority violated any applicable civil service rule, regulation, law or policy the commission shall grant such relief to the appellant as allowed by law. If the commission finds that the director or the appointing authority did not violate any applicable civil service rule, regulation, law or policy the commission shall deny the appeal and uphold the action of the director or the appointing authority.
- (t) Findings and decisions. The findings and decisions of the commission shall be final on all appeals, unless an appeal is taken pursuant to section 91-14, HRS.
- (u) Notice of decision. The commission shall, within 60 days after the close of the hearing on the appeal, or such other time as the commission may deem reasonable, notify all parties of its decision and order by delivering or mailing a certified copy of the decision and order to each party or to such party's attorney of record. This decision and order shall include separate findings of facts and conclusions of law and, if the parties have presented to the commission proposed findings of fact the commission shall incorporate in its decision a ruling upon each proposed finding so presented. [Eff August 11, 2002] (Auth: HRS §§76-14, 76-47, 91-9, 91-9.5, 91-10, 91-11) (Imp: HRS §§76-14, 76-47, 91-9, 91-9.5, 91-10, 91-11)

DEPARTMENT OF HUMAN RESOURCES

PART 1 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 2

GENERAL PROVISIONS; DEFINITIONS

Subchapter 1 General Provisions

- §2-1 Purpose of chapter; statement of policy
- §2-2 Applicability of rules
- §2-3 General responsibilities of director
- §2-4 General responsibilities of departments
- §2-5 Reporting personnel information
- §2-6 Authority to investigate
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Subchapter 2 Public Information; Petition for adoption, amendment, or repeal of rules;
Declaratory ruling

- §2-10 Public Information
- §2-11 Petition for adoption, amendment or repeal of rules
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Subchapter 3 Definitions

- §2-13 Definitions

Historical Note: This chapter is based substantially on chapter 1, subchapters 1 and 2 of part 1 of the rules of the civil service commission, and chapter 16, subchapter 2 of part 2 of the rules of the director of civil service.

[Eff Jul 01 2002]

SUBCHAPTER 1

GENERAL PROVISIONS

§2-1 Purpose of subchapter; statement of policy.

The purpose of this subchapter is to set forth the fundamental character of the system of personnel administration governed by these rules, consistent with merit principles and the principles of equal employment opportunity. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§2-2

§2-2 Applicability of rules.

- (a) These rules shall apply to all positions and employees in the civil service of the City and County of Honolulu. Unless a rule specifies otherwise, it shall not apply to positions and employees exempt from civil service.
- (b) Where the terms of collective bargaining agreements pursuant to chapter 89, HRS, conflict with these rules the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9(d), HRS. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12,76-13)

§2-3 General responsibilities of director.

The director shall direct and supervise all administrative and technical activities of the department of human resources. In addition to other duties imposed by the civil service law, the director shall assume the duties specified in section 76-13, HRS, and is authorized to determine finally whether a position is in the civil service system. In addition, the director shall develop and promulgate such policies, rules, standards, guidelines, and procedures as the director deems necessary including, but not limited to, those addressing the following areas:

- (1) Classification and related systems to support sound utilization of human resources, recruitment of qualified personnel, and appropriate pay and pay relationships;
- (2) A civil service merit-based recruitment and examination program;
- (3) A performance appraisal system for the purpose of evaluating the performance of employees in the civil service and improving employees' performance, consistent with section 76-41, HRS;
- (4) An incentive and service awards program for the purpose of recognizing employees who contribute to the efficiency, economy, or other improvement of exceptionally meritorious special acts or services in the public interest in connection with or related to their official employment, consistent with the policies of the mayor;
- (5) Compensation administration system which provides for the proper compensation of employees and adjustments as necessitated by personnel movements and employment actions;
- (6) Personnel file management for the purpose of ensuring the proper retention, organization and release of personnel records and materials.

[Eff Jul 01 2002] (Auth: HRS §§76-12, 76-13, 76-17) (Imp: HRS §§76-12, 76-13, 76-17)

§2-4 General responsibilities of departments.

- (a) The head of each department shall be responsible for personnel management within each department and shall provide for the cooperation of the department with the department of human resources in the administration of personnel matters.
- (b) Authority for the administration of departmental personnel matters may be delegated to those officials responsible for planning, directing, and supervising the work of others to the extent compatible with economical and efficient administration. The exercise of the authority shall be subject to policies, rules, regulations, guidelines, procedures, and standards established by the head of the department and the department of human resources.
- (c) Each employing department shall be responsible for establishing and maintaining written personnel policies which conform to the applicable laws, rules, regulations, policies, guidelines, procedures and standards of the civil service system. [Eff Jul 01 2002] (Auth: HRS §§76-12, 76-13, 76-17) (Imp: HRS §§76-12, 76-13, 76-17)

§2-5 Reporting personnel information.

Each department shall report personnel information to the director as the director deems necessary as to matters within the director's jurisdiction. The information shall be supplied at the time and in such manner as the director prescribes. [Eff Jul 01 2002] (Auth: HRS §§76-13, 76-17) (Imp: HRS §§76-13, 76-17)

§2-6 Authority to investigate.

The director may conduct investigations to secure enforcement of chapter 76, HRS, and other pertinent portions of law and the rules, regulations, guidelines, procedures, standards and policies governing civil service system employment. This may include investigations into the qualifications and suitability of applicants for positions in the civil service system. [Eff Jul 01 2002] (Auth: HRS §§76-12, 76-13, 76-17) (Imp: HRS §§76-12, 76-13)

§2-7 Enforcement authority of director

Whenever the director finds:

- (1) That any person has been appointed to, or is holding or performing the duties of a position in violation of any of the laws, rules, regulations, guidelines, procedures, standards, and policies administered by the director, the director is authorized, after giving due notice and opportunity for explanation, to certify the facts to the department with specific instructions for corrective action. Whenever the director issues specific instructions for corrective actions, the appointing authority concerned shall comply with the director's orders and make a report thereon to the director.
- (2) That any officer or employee has violated the laws, rules, regulations, guidelines, procedures, standards, and policies administered by the director, the director shall take action in accordance with law as may be appropriate to secure compliance. [Eff Jul 01 2002] (Auth: HRS §§76-12, 76-13, 76-17) (Imp: HRS §§76-12, 76-13)

§2-8 Equal employment opportunity.

There shall be equal opportunity for all in compliance with all laws prohibiting discrimination. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-1, 78-2)

§2-9 Delegation of authority.

The director may delegate to departments authority to act in personnel matters in accordance with policies, rules, regulations, guidelines, procedures and standards issued by the director. [Eff Jul 01 2002] (Auth: HRS §§76-13, 76-17) (Imp: HRS §§76-5, 76-13, 76-17)

SUBCHAPTER 2

PUBLIC INFORMATION; PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES; DECLARATORY RULING

§2-10 Public information.

- (a) The public may obtain information as to matters within the jurisdiction of the director of human resources by inquiring in person, during regular business hours at the office of the director, department of human resources, Honolulu, Hawaii, or by submitting a request in writing to said office.
- (b) All rules of the director are on file and available for public inspection during regular business hours at the department of human resources.
- (c) All final opinions and orders of the director rendered in the performance of its function are available for public inspection at the department of human resources during regular business hours.
- (d) Copies of compilations of rules and supplements thereto are available to the public at a price to be fixed by the director in accordance with section 91-2.5, HRS to cover mailing and publication costs.
[Eff Jul 01 2002] (Auth: HRS §§76-17, 91-2, 91-2.5) (Imp: HRS §§91-2, 91-2.5)

§2-11 Petition for adoption, amendment or repeal of rules.

- (a) Any interested person may petition the director, requesting the adoption, amendment or repeal of any rule or regulation of the director of human resources.
- (b) The petition shall be submitted in a format specified by the director. The original petition and five copies shall be submitted to the director of human resources.
- (c) The director, within thirty days after the submission of the petition, shall either deny the petition in writing, stating the reasons for the denial, or initiate proceedings in accordance with section 91-3, HRS, for the adoption, amendment, or repeal of the rule, as the case may be.
- (d) Any petition which does not conform to the requirements specified herein may be rejected.
- (e) The director may, at any time on the director's own initiative, initiate proceedings in accordance with the procedures provided herein for the adoption, amendment or repeal of rules.
- (f) Public hearings shall be held in accordance with section 91-3, HRS.
- (g) Filing and effective date of rules shall be in accordance with section 91-4, HRS. [Eff Jul 01 2002] (Auth: HRS §§76-17, 91-3, 91-4, 91-6) (Imp: HRS §§76-17, 91-3, 91-4, 91-6)

§2-12 Declaratory ruling.

- (a) Any interested person may petition the director for a declaratory order as to the applicability of any statutory provision or any rule or order of the director.
- (b) The petition shall be submitted in a format specified by the director and the original and three copies shall be submitted to the director of human resources
- (c) Any petition which does not conform to the foregoing requirements may be rejected.
- (d) The director of human resources may, for good reason, refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the director of human resources may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future;
 - (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain action if the petitioner was to seek judicial relief;
 - (3) The issuance of the declaratory ruling may adversely affect the interests of the City, the department of human resources or any of its officers or employees in any litigation which is pending or may reasonably be expected to arise; or
 - (4) The matter is not within the jurisdiction of the director.
- (e) Where any question of law is involved, the director may refer the matter to the corporation counsel. The director may also obtain the assistance of other agencies, where necessary or desirable.
- (f) Each petition shall be either rejected pursuant to subsection (c) or acted upon within a reasonable time. Upon the disposition of the petition, the petitioner shall be promptly informed thereof by the director of human resources.
- (g) An order disposing of a petition shall be applicable only to the fact situation alleged in the petition or set forth in the order. It shall not be applicable to different fact situations or where additional facts not considered in the order exist. Such order shall have the same force and effect as other orders issued by the director. [Eff Jul 01 2002] (Auth: RCH HRS §§76-17, 91-7, 91-8) (Imp: HRS §§91-7, 91-8)

SUBCHAPTER 3

DEFINITIONS

§2-13 Definitions.

Unless otherwise indicated by the context, words used in these rules are understood to have the following special meanings:

"Administrative review" means a re-evaluation of an examination, classification or initial pricing action in accordance with the provisions set forth in these rules.

"Appointing authority" means a department head or designee having the power to make appointments, make changes in the status of employees, and take other actions as provided elsewhere in these rules.

"Basic compensation or basic rate of pay" means the hourly, daily, monthly, or annual rate of pay used to determine an employee's lawful compensation in accordance with appropriate salary schedules and applicable rules. The rate of pay shall not include additional or extra compensation granted such as, but not limited to, overtime, stand-by duty, temporary hazard pay, and other temporary pay differentials.

"Calendar day or day" means a period that begins at midnight, Hawaii Standard Time and ends twenty-four hours later at midnight, Hawaii Standard Time.

"Calendar year" means the period beginning January 1 and ending December 31 of the same year.

"Certificate of eligibles" means the official document referring eligibles to the appointing authority for employment consideration.

"City" means the City and County of Honolulu.

"City service" means all offices and other positions in the public service of the city.

"Civil service" includes all positions in the city service not exempted by the provisions of sections 6-1103 and 6-1104 of the Revised City Charter or other law.

"Civil service appointment" means an appointment to a civil service position from an appropriate eligible list.

"Civil service employee" means an employee who has met all the requirements for regular civil service status under section 76-27 and 78-1 of the Hawaii Revised Statutes.

"Civil service law" means chapter 76, HRS, as amended, and Article VI, chapter 11 of the Revised City Charter, as deemed applicable. Unless the context clearly indicates otherwise, all terms used herein shall have the same meaning as in the civil service law and references to the "law" shall be taken to mean the civil service law.

"Civil service recruitment procedure" means the procedure for the competitive process by which an applicant is deemed qualified for civil service appointment.

"Civil service system" means the personnel system based on the merit principle specified in section 76-1, HRS.

"Class specification" means the official document, approved by the director, providing a formalized summary of the nature and scope of duties and responsibilities, level of difficulty and authority, and minimum qualification requirements of a class.

"Class or class of work" means a group of positions that reflect sufficiently similar duties and responsibilities such that the same title and the same pay range may apply to each position allocated to the class.

"Classification" means the process of establishing an occupational framework and grouping positions on the basis of the kind and level of work and knowledge, skills, abilities and qualifications required for performance of the work.

"Classification system" means a system in which classes of positions are arranged in a logical and systematic order.

"Commission" means the civil service commission of the City and County of Honolulu.

"Compensation plan" means the pay plan consisting of the assignment of classes in the classification systems to ranges in the appropriate salary schedules.

"Continuous recruitment and examination announcement" means an announcement of competitive examination without a closing date for which applications are received and examinations conducted on a continual basis.

"Critical-to-fill" means

- (1) Positions so vital to the organization's mission such that the work cannot be assigned or assumed by other positions, and the inability to fill would significantly and adversely affect the organization's ability to accomplish its goals and objectives; or
- (2) Positions providing direct services that must be performed because the health, safety, and welfare of the general public are involved.

"Demotion" means a movement of a regular employee from the position the employee last held permanent appointment to another position:

- (1) Assigned to a class with a lower pay range in the same salary schedule; or
- (2) Assigned to a class with a lower maximum rate of compensation in a another salary schedule and the dollar difference between the two maximum rates is more than the dollar difference between the minimum and second step of the former pay range; provided that, a rate of five per cent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five per cent of the maximum rate of a range in a salary schedule with single rate pay ranges shall be deemed equivalent to the minimum or first step of the pay range.

"Department" means any department, board, commission or agency of the city.

"Director" means the director of human resources.

"Discharge" means an action taken by the appointing authority dismissing an employee for just cause.

"Discipline" means an action to reprimand, suspend, demote or discharge an employee or reallocate the employee's position downward because of misconduct by the employee.

"Earned rating" means the rating attained as a result of an applicant's qualification or performance or both in an examination, without credit for the points added through veteran's preference.

"Eligible" means a person whose name is on an eligible list.

"Eligible list" means a list of persons who have qualified for appointment to positions in a particular class.

"Employee" means a person holding a civil service position in accordance with civil service law unless language clearly indicates otherwise.

"Examination" means an assessment method used to evaluate the knowledge, skills and abilities of applicants for employment.

§2-13

"Exemptions from civil service" means those positions, persons in those positions, and personal services exempted from the civil service by the provisions of sections 6-1103 and 6-1104 of the Revised City Charter or other law.

"Holiday" means the day of the week that a legal holiday is observed pursuant to law.

"Initial allocation" means the action taken on a new position to place it in a specific class on the basis of its duties, responsibilities, and minimum qualification requirements.

"Initial appointment" means an appointment of an individual without regular status through an initial probationary, limited-term, provisional or short-term appointment.

"Initial pricing" means the determination of the appropriate pay range and pay relationships for a new class based on appropriate factors.

"Initial probationary period" means a probationary period required of a person entering the city civil service to fill a permanent position.

"Internal departmental competitive examination" means a competitive examination conducted by an appointing authority resulting in the promotion of a regular employee of the department without using a civil service eligible list.

"Inter-departmental promotional examination announcement" means a recruiting notice announcing the receipt of applications for participation in an examination for positions in a particular class, admission to which is limited to regular employees in the city service.

"Inter-governmental movement" means the movement of employees between civil service positions of the State government, the Judiciary, the Hawaii Health Systems Corporation, or any county government in the State.

"Intra-departmental promotional examination announcement" means a recruiting notice announcing the receipt of applications for participation in an examination for positions in a particular class, limited to regular employees of a particular city department or agency.

"Involuntary demotion" means a demotion action taken by an appointing authority due to the employee's inability to perform the duties and responsibilities of the employee's position (other than for a disability), or due to the employee's failure to meet qualification requirements for the position.

"Labor Registration classes" means classes of positions for which the major emphasis in terms of minimum qualification requirements is willingness to perform physical tasks and the ability to follow written instructions.

"Layoff" means the release of an employee due to lack of work, lack of funds, or other legitimate reasons.

"Leave of absence without pay or leave without pay" means a temporary non-pay status and absence from duty.

"Limited-term appointment" means an appointment with a limitation date that is made from an eligible list or through a civil service recruitment procedure.

"Limited-term promotion" means a promotion to a temporary position or to a temporary vacancy in a permanent position for a specified period of time.

"Minimum qualification requirements" means the minimum education, experience, knowledge, skills, abilities, licensing, and other special requirements essential for performance in a class of work or a position.

"New probationary period" means a probationary period served by a regular employee as part of the examination process to determine the employee's fitness and ability for the new position.

"Non-regular employee" means an employee in a civil service position, not having regular status, including but not limited to those having short-term appointments, provisional appointments, limited-term appointments and initial probationary appointments.

"Normal workweek" means a week in which an employee, other than a fire fighter, is normally required to perform five 8-hour days of service.

"Open competitive examination" means a competitive examination conducted by the department of human resources or designated appointing authority that is open to all qualified employees of the civil service and qualified applicants from the general public.

"Open-competitive examination announcement" means a recruiting notice announcing the receipt of applications from the general public for participation in an examination for positions in a particular class.

"Open-competitive list" means a list of persons who have been found qualified by an open-competitive examination for appointment in a particular class.

"Pay differential" means any additional compensation, in addition to the basic rate of pay, including but not limited to overtime, stand-by duty, compression differentials, lump sum pay, bonuses, recruitment and other financial incentives, awards, and other temporary differentials.

"Pay range" means the group of salary rates from minimum to maximum to which a class may be assigned as set forth in the salary schedules. Pay ranges among the different salary schedules are considered to be higher or lower than, or the same as the others on the basis of the maximum salary rate. In a salary schedule with single rate pay ranges, the single rate is considered the maximum rate of the range.

"Permanent position" means a position without time limitation.

"Position" means a specific job, whether occupied or vacant, consisting of all the current duties and responsibilities assigned or delegated by competent authority, requiring the fulltime or part-time employment of one person.

"Position description" means an official written description, approved by the appointing authority, of the duties and responsibilities assigned to and required of a specific position.

"Pricing" means the process of assigning classes to pay ranges based on appropriate factors.

"Probationary appointment" means an appointment to fill a permanent position

"Probationary period" means a specified period which serves as the final test of an employee's qualifications for the position.

"Promotion" means a movement of a regular employee from the position the employee last held permanent appointment to another position:

- (1) Assigned to a class with a higher pay range in the same salary schedule; or
- (2) Assigned to a class with a higher maximum rate of compensation in a another salary schedule and the dollar difference between the two maximum rates is more than the dollar difference between the minimum and second steps of the former pay range; provided that, a rate of five per cent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five per cent of the maximum rate of a range in a salary schedule with single rate pay ranges shall be deemed equivalent to the minimum or first step of the pay range.

"Promotional examination" means a competitive examination conducted by the department of human resources or designated appointing authority and is limited to qualified regular employees in the civil service. This examination may be interdepartmental or intradepartmental.

"Promotional list" means a list of regular employees who have been found qualified by a promotional examination for appointment in a particular class.

"Provisional appointment" means an appointment made pending establishment of an appropriate eligible list, but only as necessary to prevent stoppage of essential public business.

"Rating" means the score or measure of performance of an applicant in an examination.

"Reallocation" means the movement of a position from one class to another class.

"Reallocation downward" means the reallocation of a position:

- (1) To a class assigned to a lower pay range in the same salary schedule; or
- (2) To a class in another salary schedule with a lower maximum rate of compensation and the dollar difference between the two maximum rates is more than the dollar difference between the minimum and second steps of the former pay range; provided that, a rate of five percent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five per cent of the

maximum rate of a range in a salary schedule with single rate pay ranges shall be deemed equivalent to the minimum or first step of the pay range.

"Reallocation upward" means the reallocation of a position:

- (1) To a class assigned to a higher pay range in the same salary schedule; or
- (2) To a class assigned to another salary schedule with a higher maximum rate of compensation and the dollar difference between the two maximum rates is more than the dollar difference between the minimum and second steps of the former pay range; provided that, a rate of five per cent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five per cent of the maximum rate of a range in a salary schedule with a single rate pay range shall be deemed equivalent to the minimum or first step of the pay range.

"Recall List" means a list of regular employees who have been laid off.

"Recruitment" means the process of locating applicants for employment.

"Re-employment list" means a list of eligibles comprised of former or current regular employees or both who meet requirements or conditions prescribed in these rules.

"Regular employee" means an employee who has been appointed to a permanent position in the civil service in accordance with law and who has successfully completed the initial probationary period, or as otherwise provided by statute.

"Regular status" means the status and rights enjoyed by an employee upon satisfactory completion of the employee's initial probationary period, or as provided by statute.

"Related class" means a class which requires substantially similar knowledge, skills, and abilities as another class.

"Related series" means a series of classes which requires substantially similar knowledge, skills, and abilities as another series.

"Repricing" means the reassignment of classes from one pay range to another in the same salary schedule based on appropriate factors.

"Resignation" means an action by an employee severing the employee's employment relationship.

"Revised city charter" means the REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU, as amended.

"Salary or pay schedule" means a table of pay rates and ranges as established through collective bargaining, by executive order, or as otherwise authorized by law.

"Selective certification" means the process of certification that is limited to those persons possessing distinctive or unique knowledge, skills, abilities and other characteristics deemed critical to the successful performance of the work of a specific position.

§2-13

"Series of classes" means two or more classes of positions within an occupational group that are similar to the extent that they represent the same work specialty, require the same essential knowledge, skills, and abilities for the performance of work in the specialty, but differ in relative levels of difficulty and responsibility.

"Short-term appointment" means an appointment that does not exceed ten working days and is made to fill a position in a serious emergency when it is not practicable to ascertain whether there is an eligible list from which to make a selection.

"Sick leave" means a leave of absence with pay as authorized by law, because of illness or injury.

"Sick leave allowance" means the total number of working hours of sick leave to which an employee is entitled by law and under these rules. §2-13

"Temporary assignment" means the assignment by a competent authority and the assumption, without a formal change in position, of all or a major portion of the significant duties and responsibilities of another position.

"Temporary reallocation" means the reallocation of a position because of emergency, or unusual, or unique work situations for a period not to exceed six months, but may be extended for good reason for additional six-month periods with the prior approval of the director.

"Termination of services" means complete severance of an employee from the service of the city, not including resignation or discharge.

"Transfer" means a movement of an initial probationary or regular employee from the position the employee last held a permanent appointment to another position that is:

- (1) In the same class;
- (2) In a different class assigned to the same pay range in the same salary schedule;
- (3) In a different salary schedule and in a class assigned to a pay range whose highest pay step is the same as the highest pay step of the pay range of the class from which the employee is transferring; or
- (4) In a different salary schedule and in a class assigned to a pay range whose highest pay step is less than or exceeds the highest pay step of the class from which the employee is transferring by no more than the dollar difference between the first and second steps of the pay range of the class from which the employee is transferring; provided that a rate of five per cent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five per cent of the maximum rate of a range in a salary schedule with single rate pay ranges shall be deemed equivalent to the minimum or first step of the pay range.

"Vacation" means a leave of absence with pay as authorized by law, granted at the request of an employee for the purpose of rest and relaxation or for the personal convenience of the employee and calculated as required by law and these rules.

"Vacation allowance" means the total number of working hours of vacation an employee is entitled to by law and under these rules.

"Voluntary demotion" means a demotion requested by an employee and approved by the director and by the appointing authorities concerned.

"Week" means a period of seven consecutive calendar days, beginning on Sunday and ending seven days later on Saturday.

"Workday or shift" means, normally, a period of eight hours during which a full-time employee is scheduled to perform such employee's normal day's work. For full-time employees who work more than eight hours in a day on a straight time basis, the workday shall be the number of hours the employee is scheduled to perform the employee's normal work beginning from the time the employee reports to work and ends when the employee leaves work. For scheduling purposes, a workday or shift may begin on one day and end on the next day.

[Eff Jan 20 2012] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 78-1)

DEPARTMENT OF HUMAN RESOURCES

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 3

FILLING POSITIONS IN THE CIVIL SERVICE

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Historical Note: Chapter 3 of part 2 is based substantially on chapter 3 of part 1 of the rules of the civil service commission. [Eff Jul 01 2002]

SUBCHAPTER 1

GENERAL PROVISIONS

§3-1 Purpose.

The purpose of this chapter is to implement a civil service system of recruitment and selection of public officers and employees in accordance with merit based civil service laws which will attract, select, and retain the best qualified individuals to provide competent, efficient, loyal, and ethical service to the public in accordance with the needs of the service.

[Eff Jul 01 2002] (Auth: HRS §§76-1, 76-17) (Imp: HRS §§76-1, 76-12, 76-13)

§3-2 Appointment through the civil service system.

- (a) The director shall be responsible for recruiting applicants for open-competitive and promotional examinations and for determining the relative knowledge, skills, abilities and fitness of applicants.
- (b) The director may establish standards in determining relative knowledge, skills, abilities, fitness, and other requirements which applicants must meet to be rated in examinations.
- (c) Eligibles shall be placed on an appropriate eligible list in the manner prescribed by these rules.
- (d) A person selected from an eligible list or through a civil service recruitment procedure, for other than a temporary appointment, will be given a probationary appointment and shall be required to serve an initial or new probationary period under the conditions prescribed in these rules.
- (e) Membership in the civil service or regular status will be acquired by a probationary employee upon satisfactory completion of an initial probationary period.
- (f) The director may determine the conditions for other types of appointments and may prescribe the methods for replacing persons holding these appointments.

(g) No person shall be appointed, promoted, transferred, or demoted in the civil service system until the person passes the examination prescribed by the director or unless specifically exempted

[Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) (Imp: HRS §76-13)

§3-3 Discretion of appointing authority in filling civil service vacancies. An appointing authority may fill any vacancy in the civil service by appointment from a civil service eligible list, or any other means as provided for by these rules or law. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) (Imp: HRS §§76-12, 76-13)

SUBCHAPTER 2

RECRUITMENT

§3-4 Citizenship and residence.

Applicants must meet requirements under applicable state and federal laws regarding citizenship and residency.

([Eff Jan 20 2012] (Auth: HRS §§76-17, 76-22.5, 78-1) (Imp: HRS §78-1)

§3-5 Announcement of recruitment and examination.

As the needs of the City require, the director shall plan and carry out recruiting programs with the following minimum provisions:

- (1) Whenever there is need for eligibles, the director shall conduct a recruitment and an examination in the manner deemed reasonable and appropriate, and post the announcements at physical or electronic locations as determined by the director. The director may delegate the recruitment and examination to the appointing authority of a department with the need for eligibles following the execution of a written delegation agreement between the department and the director provided the delegation plan has been approved by the director.
- (2) Open-competitive recruitments shall be announced in accordance with any applicable rules, regulations, and laws, as determined by the director.
- (3) Announcements shall be distributed to all applicable City departments and to other agencies and persons designated by the director.
- (4) The appointing authority shall take all reasonable measures to bring announcements to the attention of employees in the department and distribute the announcements to the various units within the department and other agencies.

[Eff Jan 20 2012] (Auth: HRS §§76-5, 76-17, 76-22.5) (Imp: HRS §78-1)

§3-6 Labor registrations.

- (a) There may be separate lists for different kinds of labor classes. The period for public notice, the period for filing applications and other procedures pertaining to labor registration shall be determined by the director.
- (b) The director may determine whether an examination is proper or necessary and may require applicants to pass tests including, but not limited to, physical abilities and reading skills related to the work to be performed. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-18, 76-22.5) (Imp: HRS §§76-12, 76-13; RCH §6-1106)

§3-7

§3-7 Content of recruitment and examination announcement.

Announcements shall contain the following information:

- (1) Title and pay range of the class;
- (2) How to apply;
- (3) Opening and closing dates and place for filing applications;
- (4) Minimum qualification requirements; and
- (5) Other information determined as necessary or desirable by the director. [Eff Jul 01 2002](Auth: HRS §§76-17, 76-18, 76-22.5) (Imp: HRS §§76-12, 76-13, 76-18, 76-22.5)

§3-8 Period of recruitment.

- (a) Recruitment for open-competitive examinations shall be for a reasonable period based on the needs of the service.
- (b) The director may announce an open-competitive examination on a continuous basis. Continuous recruitments may close at any time. Notice that the recruitment has been closed with the reason shall be posted in the physical or electronic locations designated by the director.
- (c) The director may extend the period for receipt of applications. Notice of the extension shall be posted in the physical or electronic locations designated by the director.

[Eff Jan 20 2012](Auth: HRS §§76-17, 76-22.5) (Imp: HRS §§76-12, 76-13, 76-22.5)

§3-9 Acceptance of applications.

- (a) Application for examination and employment shall be made on the form and with such supplemental information as prescribed by the director.
- (b) The director may authorize persons and agencies to distribute and accept applications.
- (c) Applications shall be submitted by the method and time as specified in the examination announcement.
- (d) Late applications for competitive examinations may be accepted for good reason as determined by the director or designated appointing authority.
- (e) Applications submitted to the department of human resources or other designated agencies shall constitute official examination records. Accompanying documents may be returned to applicants at the discretion of the director or designated appointing authority.

[Eff Jan 20 2012] (Auth: HRS §§76-17, 76-22.5) (Imp: HRS §§76-12, 76-13)

§3-10 Cancellation of recruitment and examination announcements.

- (a) If there is no need for eligibles after a recruitment and examination announcement has been published or if other circumstances warrant it, the announcement may be canceled.
- (b) All applicants shall be notified of the cancellation.

[Eff Jul 01 2002](Auth: HRS §§76-17, 76-22.5) (Imp: HRS §§76-12, 76-13)

§3-11 Recruitment incentives.

- (a) To enhance the recruitment of persons employed or appointed to critical-to-fill or labor shortage positions, appointing authorities with the prior approval of the director may:
 - (1) Compensate applicants for all or a portion of travel and transportation expenses; and/or

- (2) Provide a monetary incentive in the form of a pay differential, as pre-determined and approved by the director.
 - (b) Recruitment incentives must be consistent with the merit principle and organizational and operational goals and objectives.
 - (c) Recruitment incentives are subject to annual review.
 - (d) The director may, for good reason, terminate incentives at any time.
- [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-23.5) (Imp: HRS §§76-12, 76-13, 76-23.5)

SUBCHAPTER 3

EXAMINATION

§3-12 Scope and character of examinations.

- (a) The director may consult with qualified persons in regard to the content of tests, rating of applicants or related test matters.
- (b) Each examination shall relate to those matters which will evaluate the applicants' knowledge, skills and abilities required to perform the duties of the class or position for which the examination is conducted.
- (c) Any accepted personnel examining technique may be used, including a verification and evaluation of education, training, and experience; tests of knowledge, skill, ability or aptitude; medical examinations, pre-employment drug testing; appraisals of personal suitability including factors such as employment history and references; inquiry into the moral character of applicants and any other matter that the director determines appropriate. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-18; RCH §6-1106) (Imp: HRS §§76-12, 76-13)

§3-13 Disqualification.

- (a) The director may, for good reason, reject any application, disqualify an applicant for any period of time, or deny/rescind the certification of eligibility. This includes, but is not limited to, denying an applicant authorization to take an examination or denying or rescinding the certification of eligibility for any of the following reasons:
 - (1) Failure to meet the minimum qualification requirements or other public employment requirements for admission to the examination by the closing date for receipt of applications, except as provided otherwise in the examination announcement;
 - (2) Submission of defective or incomplete application;
 - (3) Refusal or failure to furnish documents required to verify any statements made in the application;
 - (4) Deception, fraud or false statements in the application, examination or appointment process;
 - (5) Failure to meet medical requirements to perform the essential job functions of the class or position;
 - (6) Illegal use of drugs;
 - (7) Conviction of any controlled substance-related offense during the three-year period immediately preceding the date of the application for employment;
 - (8) Conviction of a criminal offense which affects the applicant's suitability to properly perform the duties and responsibilities of the class or position and investigation indicates that the applicant has not been sufficiently rehabilitated to warrant public trust;

- (9) A record of misconduct which is detrimental to the proper performance of the duties and responsibilities of the class or position;
 - (10) Conviction of any act, attempt, or conspiracy to overthrow the State or the federal government by force or violence.
 - (11) For other good reason as determined by the director.
- (b) The director may conduct investigations to determine an applicant's qualifications and suitability for employment in the civil service. If the investigation discloses that the person is ineligible for the position, the director shall take appropriate corrective action, which may include denying authorization to take the examination, removing the person's name from the list of eligibles, rescinding the certification of eligibility, barring an applicant from civil service employment for a specific period of time, or any combination thereof.
- (c) The director shall notify any applicant whose application is rejected, specifying the reasons for the rejection.
- (d) An applicant may request an administrative review of an examination rating in accordance with section 3-18, Administrative review of examination results. A request for administrative review shall not delay, prevent or invalidate the certification of names from the eligible list nor the appointment of a person from the list.
- [Eff Jan 20 2012](Auth: HRS §§76-17, 76-18, 76-29, 78-2.6, 831-3.1) (Imp: HRS §§76-12, 76-13, 78-2.6, 831-3.1; RCH §6-1106)

§3-14 Kinds of examinations.

- (a) Promotional examinations.
- (1) Promotional examinations conducted by the department of human resources may be either intra-departmental or inter-departmental at the discretion of the director.
 - (2) The director may authorize an appointing authority to make promotions by internal departmental competitive examination provided the following conditions are met:
 - (A) The employee to be promoted is a regular employee in the department and the movement is from a position in which the employee last held permanent appointment.
 - (B) The employee meets the minimum qualification requirements for the class of work and vacant position, including experience, education, licensing and other special requirements prescribed in the class specification as essential for performance of the class of work to which the employee is to be promoted.
 - (C) There is no civil service intra-departmental promotional list, or there are fewer than five available eligibles on the intra-departmental promotional list certifiable to fill the vacancy.
 - (D) The vacancy notices shall be posted ten calendar days prior to the closing date for receipt of applications. The posting shall be in accordance with the instructions of the director.
 - (E) The promotion is based on merit principles. Each promotion shall be documented. In addition it will be subject to audit by the department of human resources.
 - (F) If the promotion is to a position in a different bargaining unit, or to a position with knowledge, skills, and abilities substantially greater than required in the employee's present position, the department of human resources may conduct an appropriate examination, to determine

whether the employee is qualified.

- (G) A qualified service-injured person is not available in the department or on the civil service priority placement list.
- (b) Open-competitive examinations. Examinations shall be open-competitive at the discretion of the director. In making the determination, the director shall consider the sufficiency of competition within the civil service as well as the requirements of the class for which such examinations are being conducted.
- (c) Other examinations. The director may authorize an examination for any movement into a position which includes knowledge, skills and abilities not required in the employee's current position. [Eff Jan 20 2012] (Auth: HRS §§76-17, 76-18) (Imp: HRS §§76-12, 76-13; RCH §6-1106)

§3-15 Conduct of examinations.

- (a) Examinations shall be held at the times, places and in the manner which, in the judgment of the director, are most practical and meet the needs of the service.
- (b) Qualified applicants shall be notified of the date, time and place of the examination via United States Postal Service or electronic mail. The department shall not be responsible if a notice is lost in the mail or undeliverable. Nor shall the department be responsible if the notice is sent to an applicant's former physical or electronic address through failure of the applicant to inform the department of a change of address.
- (c) No applicant shall be entitled to take an examination at a date, time, or place other than stated in the notification except as the director may authorize.
- (d) All reasonable precautions shall be taken to protect the confidentiality of information about applicants. [Eff Jul 01 2002](Auth: HRS §§76-17, 76-18) (Imp: HRS §§76-12, 76-13; RCH §6-1106)

§3-16 Rating of examinations.

- (a) Appropriate testing techniques and procedures shall be used in rating examinations and determining the relative ranking of applicants. The final earned rating required to pass an examination shall be set by the director. The director may set minimum ratings for each part of an examination. Applicants may be required to obtain at least the minimum rating in each part of the examination to be rated on the remaining parts. The final earned rating of each applicant shall be determined by combining the earned ratings of each part of the examination in accordance with the weights established.
- (b) For eligible lists based on open-competitive examinations which are held on a continuous basis, eligibles shall be placed in order of their rating, regardless of the opening date of examination.
- (c) Based on factors determined by the director, applicants may be notified only as to whether or not they qualified to be on the eligible list.
- (d) Veteran's preference points are only awarded for periods and conditions authorized by law. Requirements for veteran's preference must be met at the time of application. Veterans awarded veteran's preference points will have those points used only for certification purposes in open-competitive examinations to determine whether the veteran will be certified with other eligibles.
- [Eff Jan 20 2012] (Auth: HRS §§76-17, 76-18) (Imp: HRS §§76-12, 76-13; RCH §6-1106)

§3-17 Notification of results of examination.

- (a) Applicants who participate in an examination shall be sent written notice of their test results.

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- (b) The department shall not be responsible if a notice is lost in the mail, undeliverable, or sent to an applicant's former physical or electronic address through failure of the applicant to inform the department of a change of address.
- (c) The filing of an appeal by an applicant on any part of an examination shall not delay, prevent or invalidate the certification of names from the eligible list or the appointment of a person from the list.

[Eff Jan 20 2012] (Auth: HRS §§76-17) (Imp: HRS §§76-12, 76-13)

§3-18 Administrative review of examination results.

- (a) An applicant may request an administrative review of an examination rating within ten calendar days from the postmark date of the original notice or the original date of the original electronic notice of examination results.
- (b) The applicant shall be notified in writing of the action taken within ten calendar days after the completion of the administrative review process. Information on filing an appeal to the Civil Service Commission shall accompany the written decision.
- (c) A request for administrative review or the filing of an appeal with the Civil Service Commission shall not delay, prevent or invalidate the certification of names from the eligible list or the appointment of a person from the list.

[Eff Jan 20 2012] (Auth: HRS §§76-17, 76-18, 76-42) (Imp: HRS §§76-12, 76-13)

§3-19 Changes in rating.

- (a) Changes in rating may be made as a result of the discovery of errors in the rating, or as a result of an administrative review.
- (b) Rating errors may be corrected throughout the life of the eligible list.
- (c) Applicants whose ratings are changed shall be notified.
- (d) Changes in rating shall not affect a certification already issued or invalidate an appointment already made from the eligible list, except that the appointment shall be voided when a person is found within the probationary period to have failed the examination.

[Eff Jul 01 2002] (Auth: HRS §§76-17, 76-18) (Imp: HRS §§76-12, 76-13)

§3-20 Custody and protection of examination materials.

- (a) To protect the confidentiality of examination questions, review of test materials prepared by the department of human resources or obtained from other governmental jurisdictions or private firms shall not be permitted.
- (b) Technical material and all examination booklets used in the preparation and rating of examinations given jointly by the department of human resources and any other organization, and examinations prepared specifically for any organization are confidential and shall remain the property of the department of human resources and in its custody when not needed for test administration or appeal purposes by the organization.
- (c) All examination material relating to a particular applicant or applicants including but not limited to reports of character and material regarding personal suitability of the applicant shall be considered confidential information. Appointing authorities or their authorized representatives may inspect the examination papers of eligibles whose names have been certified to them for appointment. To preserve the confidential character and sources of information and to protect against dissemination of unfounded or unproved allegations, reports of character, personal suitability and other confidential information shall be secured and held in strict confidence and will not be made available for review by the appointing authorities unless specifically authorized

by the director. Appointing authorities and their representatives shall not disclose the examination materials or their contents to any person.
 [Eff Jan 20 2012](Auth: HRS §§76-17, 76-18)(Imp: HRS §§76-12, 76-13)

§3-21 Records and reports of examination.

- (a) A record of each examination shall be retained for the following periods whichever is the latest: a period of one year from the date the eligible list expired; one year after the eligibility of the eligible expired in the case of a continuous recruitment examination record; two years from the date of the last personnel action resulting from an appeal, grievance or judicial proceeding involving a record; or as required by law.
- (b) The record shall contain at least the following information:
 - (1) Examination announcement;
 - (2) Number of eligible and ineligible applicants;
 - (3) Tests administered and the minimum passing scores.

[Eff Jul 01 2002](Auth: HRS §§76-17, 76-18)(Imp: HRS §§76-12, 76-13)

SUBCHAPTER 4

CERTIFICATION

§3-22 Duration of eligibility.

- (a) Open or promotional eligible list. An eligible on an open or promotional competitive eligible list shall have eligibility for employment consideration for no less than one year from the date the list is established or until the list is canceled or terminated. The eligibility period may be extended at the discretion of the director.
- (b) Re-employment list. A person who applies and qualifies to be on the re-employment list shall have eligibility for employment consideration for one year from the date of resignation.
- (c) Priority placement list. A person on the priority placement list shall be eligible for employment consideration for one year from the date of termination from City employment.
- (d) Registration list. Lists for labor registration classes shall be in effect for six months unless extended by the director.
- (e) Recall list. A person on a recall list for employees laid off due to lack of work or lack of funds shall have eligibility for employment consideration in accordance with the applicable collective bargaining agreement, directives, or rules, except for an employee with a limited term appointment. [Eff Jan 20 2012] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-23 Certification of eligibles.

- (a) Upon receipt of a request for a list of eligibles, the director shall certify names from available lists of eligibles for each vacancy in accordance with this section, except for the following:
 - (1) Labor registration lists for which the director shall determine the number and manner in which registrants are certified;
 - (2) Regular employees who resigned in good standing and subsequently filed written application for reemployment will be certified in addition to the eligibles certified from an open competitive list.

- (b) The order of eligible lists to be used for certification shall be as follows:
- (1) Priority placement lists.
 - (A) Regular employees who have sustained compensable work-related injuries covered under workers' compensation and who have been found to be medically certified as permanently unable to perform the normal duties of their class are eligible for priority placement upon their written request provided they are not totally and permanently disabled and have been medically cleared for vocational rehabilitation.
 - (B) The written request for priority placement must be made by the employee within six months of being medically cleared to participate in a vocational rehabilitation program. Employees who fail to request priority placement within six months of being cleared for vocational rehabilitation, or who decline to accept such priority placement shall be considered to have waived their right to priority placement and shall be declared ineligible.
 - (C) Work-injured employees shall be placed on priority placement list(s) for class(es) of work for which they meet the minimum qualification requirements and are capable of performing the duties and which are at the same or lower salary ranges as the position in which the injury was sustained.
 - (D) When there is more than one eligible that is available and qualified for a vacancy, all eligibles shall be certified.
 - (E) Where a priority placement list is available, that list will be referred to the appointing authority and other types of lists shall not be combined with such list.
 - (F) In the case of non-regular employees who were employed temporarily, certification shall be to temporary employment which is equivalent as far as practicable to the temporary period for which the eligible was originally appointed, but shall not extend past the scheduled termination date of their original temporary appointment.
 - (2) Recall list.
 - (A) Employees who have been laid off will receive consideration for vacancies in accordance with applicable collective bargaining agreements; or for excluded employees not covered by collective bargaining, any directives or guidelines.
 - (3) Intra-departmental promotional list.
 - (A) An eligible shall be certified on the basis of the eligible's examination rating and availability for work location and duration of employment.
 - (B) If there are any employees of a department on an inter-departmental promotional list, these eligibles may be certified to the appointing authority on an intra-departmental certification.
 - (4) Inter-departmental promotional list. An eligible shall be certified on the basis of the eligible's examination rating and availability for work location and duration of employment.
 - (5) Re-employment list. Eligibles who qualify for re-employment lists shall be employees who resigned in good standing or meet other conditions as determined by the director.
 - (6) Open competitive list. An eligible shall be certified on the basis of the eligible's examination rating and availability for work location and duration of employment.

- (c) Unless the priority placement list is used, a certification of eligibles for each vacancy in a department shall consist of a number of eligibles as requested by the appointing authority who are available for the same or related class in the order in accordance with the procedures established by the director. Eligibles shall be certified in the order that they appear on the eligible list before applying veteran's preference. The director may also authorize certification under the following conditions:
- (1) an eligible whose name is restored to a list after termination of initial probation, may be excepted from certification to the department from which the person was terminated;
 - (2) if there are less than five available eligibles on the list, the director may certify names from other eligible lists for the same or related class, in order of rank;
 - (3) a certification of eligibles shall be effective for thirty calendar days after the date of certification, and may be extended by the director.
- (d) Veterans whose examination scores, after addition of applicable preference points, equal or exceed the examination score of the last eligible to be referred based on examination score, shall also be certified. In addition, when the last eligible to be referred based on examination score is one of two or more eligibles who have identical examination scores, the two or more eligibles shall also be certified.
- [Eff Jan 20 2012] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-24 Related class lists.

When there is no list of eligibles appropriate for certification for filling a particular position requiring distinctive or unique qualifications, the director may certify selectively the names of eligibles who are qualified for the particular position. The certification may be in the order of the eligible's current ranking, or of a new ranking as determined by the director, based upon the particular requirements of the position.

[Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-25 Selection by the appointing authority.

- (a) The appointing authority may request to interview as many eligibles certified from an open-competitive eligible list as deemed necessary to fill the vacant position based on job related requirements and program needs upon approval of the director. All eligibles who possess the job related requirements must be given the opportunity for an interview.
- (b) The appointing authority shall interview all interested and available eligibles certified from the intra-departmental or inter-departmental promotional list.
- (c) The requirement to interview an eligible may be waived whenever the appointing authority has interviewed and fully assessed the eligible's qualifications for a similar position from another interview conducted during the previous twelve months.
- (d) All eligibles that are interviewed, but not selected shall be notified in writing.
- (e) Appointment from a certificate of eligibles may be made without regard to rank order. The selection process shall be documented and transmitted to the director for approval. [Eff Jan 20 2012] (Auth: HRS §§76-17, 76-18) (Imp: HRS §§76-12, 76-13, 76-18)

§3-26 Suspension, restoration and removal of names from eligible list.

- (a) The director may suspend an eligible from certification for any of the following reasons:
 - (1) Failure to reply to a written inquiry relating to availability;

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- (2) Failure to meet physical or medical requirements for the position;
 - (3) Further investigation of the eligible's suitability needs to be conducted;
 - (4) Eligible is unavailable for employment;
 - (5) The eligible is appointed to a temporary position from an eligible list. The suspension shall apply to other temporary vacancies only; or
 - (6) There is other good reason as determined by the director.
- (b) The following eligibles may, upon request, have their names restored to the list of certifiable eligibles if the eligible list is still active:
- (1) A probationary employee who was terminated without delinquency or misconduct; or
 - (2) An eligible who is currently available for employment.
- (c) The name of an eligible will be removed from an eligible list under the following circumstances:
- (1) The eligible was selected from the eligible list, or a related list at the same pay range, and is serving on initial or new probationary appointment;
 - (2) The person is found to be ineligible for appointment;
 - (3) Withdrawal by the eligible;
 - (4) For good reason including but not limited, the eligible or applicant fails to demonstrate interest or availability for employment.
 - (5) Failure to report for duty within the time prescribed by the appointing authority and good reason is not shown;
 - (6) Failure to report for or complete medical examination process and good reason is not shown;
 - (7) Failure to appear for or complete a required drug screening test and good reason is not shown;
 - (8) Eligible is determined to be an illegal user of drugs.
- [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-27 Cancellation of eligible lists.

The director may cancel an eligible list for any of the following reasons:

- (1) Changes in the minimum qualification or classification standards of a class of positions;
- (2) Abolishment of the class for which the list of eligibles was established;
- (3) All eligibles are unavailable for employment.
- (4) Or for other good reasons as determined by the director.

[Eff Jan 20 2012](Auth: HRS 76-17) (Imp: HRS §§76-12, 76-13)

§3-28 Suspension, restoration and removal of eligible from priority placement list.

- (a) The director may suspend an eligible from certification on a priority placement list for any of the following reasons:
- (1) Failure to meet physical or medical requirements to qualify for the position;
 - (2) Further investigation of the eligible's suitability is needed;
 - (3) There is other good reason as determined by the director.
- (b) Priority placement eligibles shall, with the director's approval, have their names restored to the priority placement list when their probationary period was terminated without delinquency or misconduct.
- (c) The name of an eligible shall be removed from the priority placement list under the following circumstances:
- (1) The eligible is placed in a City position;

- (2) The eligible requests to be removed from the priority placement list;
 - (3) The person is found to be ineligible for appointment;
 - (4) The eligible refuses a suitable position;
 - (5) The eligible fails to report to duty within the time prescribed by the appointing authority, and good reason is not shown;
 - (6) Failure to report for or complete medical examination process and good reason is not shown;
 - (7) Failure to appear for or complete a required drug screening test and good reason is not shown;
 - (8) Eligible is determined to be an illegal user of drugs;
 - (9) The period of eligibility has expired.
 - (10) For other good reason as determined by the director.
- [Eff Jan 20 2012](Auth: HRS §76-17)(Imp: HRS §§76-12, 76-13)

SUBCHAPTER 5

MOVEMENTS WITHOUT AN ELIGIBLE LIST

§3-29 Transfers.

- (a) Intra-departmental, inter-departmental, and inter-governmental transfers may be made when the following conditions are met:
 - (1) The employee meets the minimum qualification requirements for the position to which the employee seeks movement;
 - (2) A qualified service-injured employee is not available in the department or on the civil service priority placement list;
 - (3) The employee is an initial probationary or a regular employee; and
 - (4) The transfer shall require the prior approval of the director and the appointing authorities concerned.
- (b) For inter-governmental transfers there is an additional requirement that an appropriate promotional eligible list does not exist for the vacancy and that the employee has attained permanent civil service status.
- (c) The director may require an employee seeking transfer to qualify by examination if the position to which the employee seeks transfer requires knowledge, skills and abilities not required in the employee's current position. [Eff Jan 20 2012](Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-30 Voluntary demotions.

- (a) Intra-departmental, inter-departmental and inter-governmental voluntary demotions may be made when the following conditions are met:
 - (1) The employee meets the minimum qualification requirements of the position to which the employee seeks movement;
 - (2) A qualified service-injured employee is not available in the department or on the civil service priority placement list;
 - (3) The employee to be demoted is a regular employee and the movement is from a position in which the employee last held permanent appointment; and
 - (4) The demotion shall require the prior approval of the director and the appointing authorities concerned.
- (b) Additional conditions which need to be met for inter-governmental demotions are:

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- (1) The employee must be a regular employee of the losing jurisdiction and the movement is from a position in which the employee last held permanent appointment;
 - (2) An appropriate promotional eligible list does not exist for the vacancy.
- (c) The director may require an employee seeking a voluntary demotion to qualify by examination if the position to which the employee seeks voluntary demotion requires knowledge, skills and abilities not required in the employee's current position. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-31 Exchanges of civil service employees.

Exchanges of civil service employees of the City with employees of any state or subdivision thereof may be made subject to the following conditions:

1. Each person on exchange to the City shall have qualifications substantially equivalent to those of the City employee who is exchanged for such person.
2. The City employee on exchange shall have been an employee of the City at least three years before the beginning of the exchange period.
3. The person on exchange to the City shall hold a position in the person's state government or subdivision which is substantially equivalent to that of the City employee.
4. The City employee on exchange shall be paid the employee's regular compensation by the City, and no additional compensation.
5. The City shall not pay any traveling, transportation, board, lodging or other expenses incidental to or arising out of such exchange to any person or City employee under an exchange contract.
6. The City shall not pay any compensation to any person coming to the City under any contract of exchange; provided that in a case where the City employee on exchange becomes incapacitated or for any reason leaves the exchange position during the period of the exchange, the City may reimburse the employer of the visiting exchange person an amount not to exceed the compensation of the employee exchanged from the City, until the end of the exchange period or until such time as some adjustment satisfactory to the City is made. Contracts of exchange shall provide that the exchange state or its subdivision shall reimburse the City in a like manner.
7. The period of exchange shall not exceed twelve months.
8. The exchange shall require the prior approval of the director for the City and the affected appointing authority, and in the case of any other government employee, the appropriate governmental jurisdiction director and the affected governmental jurisdiction appointing authority.

[Eff Jul 01 2002](Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-32 Appointment of non-regular employees.

- (a) An employee filling a permanent position temporarily vacant, a temporary position or a position in an internship, apprenticeship or training program under a limited term appointment may be given a probationary appointment to the position if it later develops that the vacancy will be permanent or that the temporary position will become permanent; provided the employee was originally appointed from an appropriate eligible list and the director certifies that the action is reasonable and to the benefit of the service.

- (b) With the approval of the director, the following non-regular employees may be granted an initial probationary or limited-term appointment when the conditions provided in subsection (c) below are met:
- (1) An employee serving an initial probationary appointment may be granted an initial probationary or a limited term appointment to another position in the same class.
 - (2) An employee serving a limited-term appointment may be granted an initial probationary appointment to another position in the same class, or a limited-term appointment to another position in the same class.
- (c) An initial probationary or a limited-term appointment of a non-regular employee to the position in which the appointment is sought may be approved when the following conditions are met:
- (1) The appointment is to a position in the same department.
 - (2) At the time the non-regular employee was selected for the employee's current limited-term or initial probationary appointment, the employee was eligible to be certified for an initial probationary or limited-term appointment, whichever is appropriate, to the position for which appointment is now sought.
 - (3) A qualified person is not available on the priority placement list for the vacancy or position.
 - (4) There is no eligible on an appropriate eligible list which has a higher order of certification priority than an open competitive list for the vacancy or position.
 - (5) There is no eligible available on the open competitive list which was established for the specific vacancy or position.
 - (6) There is no regular employee who applied for the vacancy or position through an internal departmental competitive examination, and who is qualified but was not considered prior to any referral of qualified non-regular employees.
 - (7) The non-regular employee has not previously received an appointment under this section utilizing the same recruitment and certification conditions to effectuate the appointment.

[Eff Jan 20 2012](Auth: HRS 76-17) (Imp: HRS §§76-12, 76-13)

§3-33 Status of employees or activities acquired by the City.

Employees of activities purchased or acquired by the City who as of the date of purchase or acquisition are employed by such activities, may, by approval of the director, be given initial probationary appointments without competitive examination. Employees shall be placed in positions assigned to the appropriate classes and be paid as determined by the director. [Eff Jan 20 2012](Auth: HRS 76-17) (Imp: HRS §§76-12, 76-13)

§3-34 Status of employees upon reorganization or transfer.

- (a) Any regular civil service employee or officer whose position is transferred as a consequence of reorganization or transfer of functions mandated or caused by amendments or revisions to the City Charter, ordinance, resolution, or other state or federal law, shall be continued as a civil service employee or officer, without change in civil service status, reduction in pay range, loss of vacation or sick leave allowances, service credits or other rights and privileges.
- (b) The provisions of subsection (a) above shall not be construed to prevent any change in an employee's position or status resulting from transfers or reorganizations not mandated or caused by amendments or revisions to the City Charter, ordinance, resolution, or other state or federal law. [Eff Jul 01 2002](Auth: HRS §76-17) (Imp: HRS §§46-30, 76-12, 76-13)

§3-35 Status of exempt employees converted to civil service.

Whenever a position is no longer exempted from civil service, normal civil service recruitment procedures shall apply, unless the incumbent is to be retained without the necessity for examination by action of the appropriate legislative body.

- (a) In such case, the incumbent shall be retained, but only if the incumbent meets the minimum qualification requirements of the position.
- (b) The director shall set the compensation of incumbents upon their inclusion in the classification system in a manner that is fair and equitable in comparison to the compensation of other incumbents with comparable experience in the same or essentially similar classes.
- (c) The compensation of incumbents who are in the same bargaining unit, prior to and after their inclusion in the classification system shall be in accordance with applicable collective bargaining agreements and with the approval of the director. [Eff Jul 01 2002] (Auth: HRS §§76-16, 76-17) (Imp: HRS §§76-12, 76-13, 76-16)

SUBCHAPTER 6

TYPES OF APPOINTMENTS

§3-36 Permanent appointment.

A permanent appointment is granted an employee under any one of the following:

- (1) After successfully completing a probationary period in the position.
- (2) Upon movement to a vacant permanent position and the employee is not required to serve a new probationary period.
- (3) When specifically authorized by statute.
- (4) When an employee who has been displaced by a layoff is appointed to a position which is in the same or lower class in the same series and in the same department in which the employee was displaced; provided the appointment is made within twelve months from the effective date of the layoff action. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-37 Probationary appointment.

All vacancies and new positions in the civil service shall be filled by probationary appointments, except as provided by these rules.

- (a) The probationary period shall be utilized as part of the examination process to determine the fitness and ability of the employee for employment in the position and civil service. An employee must meet the performance requirements of the position in order to successfully complete the probationary period.
- (b) An initial probationary period shall be required when a person who does not have regular status is appointed to a permanent civil service position, except as provided by these rules.
- (c) A new probationary period shall be required of a regular employee when the employee:
 - (1) Is promoted to a permanent position; except when the promotion is a limited term or provisional appointment.
 - (2) Is transferred to a permanent position in another class.
 - (3) Receives a voluntary demotion to a permanent position which is not in the same series.

- (4) Is in a position which is reallocated to a class in a higher pay range.
 - (5) Is required to take an examination upon the reallocation of the employee's position.
- (d) The appointing authority has the discretion to require a new probationary period where not required under subsection(c) above.
- (e) Initial and new probationary periods shall be for a period of six months. However, this provision may be modified and the director may establish a longer initial probationary period for a class of work when a longer period is needed to adequately train and evaluate the employee. The director shall identify these classes and the duration of the probationary period in guidelines.
- (f) The appointing authority may extend the probationary period upon written notification to the employee and the director prior to the expiration of the probationary period. Failure to inform the employee in writing of the extension shall result in the employee being granted a permanent appointment by default. The appointing authority may extend the probationary period for any of the following reasons:
 - (1) Further evaluation of the employee's ability to successfully perform the duties of the position is required. The extension shall not exceed six months or as deemed appropriate by the director.
 - (2) The employee's absence affects the appointing authority's ability to evaluate the employee's performance. The duration of the adjustment shall not exceed the period of absence or combined periods of absences.
 - (3) A final determination of the employee's suitability for employment has not been made provided the extension shall not exceed six months.
 - (4) The appointment may be affected due to a pending appeal against the selection. Upon resolution of such appeal, the appointing authority shall notify the director who will take appropriate action.
- (g) Crediting of service as part of the employee's probationary period may be allowed under the circumstances below:
 - (1) Any part of a limited term service in a temporary position or a permanent position temporarily vacant or any part of service in a temporarily reallocated position may be credited as part of the employee's probationary period should changes subsequent to the initial date of the limited term appointment or temporary reallocation warrant the granting of a probationary appointment in the same class.
 - (2) Any part of an initial probationary period served in a position prior to transfer to a different position in the same class may be credited as part of the employee's initial probationary period.
 - (3) A probationary period is not required when an employee filling a permanent position temporarily vacant will be given a permanent appointment to the position if it later develops that the vacancy will be permanent and the employee was appointed through a civil service recruitment procedure to this vacancy. The employee must have been performing the duties of the position in a satisfactory manner for at least six months and the appointing authority certifies that the period of temporary service immediately preceded the new appointment and that the employee's duties are essentially similar to the duties to be performed for the initial probationary period for the same or related position.
- (h) A regular employee's new probationary period may be
 - (1) terminated and the employee shall be returned to the former position or another position in the former class in the department where the employee last held a permanent appointment and shall be restored as though the

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employee had remained in the position continuously. For compensation purposes such a release shall be considered a termination of the promotion.

- (2) A regular employee serving a new probationary period may, upon mutual agreement of the appointing authorities involved, be permitted to return to the former position or another position in the former class in the department where the employee last held a permanent appointment and shall be restored as though the employee had remained in the position continuously. For compensation purposes such a release shall be considered a termination of the promotion. [Eff Jan 20 2012] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-38 Provisional appointment.

- (a) When there is no appropriate eligible list or there are fewer than five available eligibles certifiable to fill a vacancy and public interest requires that the vacancy be filled, the director may authorize the filling of the vacancy through a provisional appointment, subject to the following conditions:
 - (1) Provisional appointment to a permanent vacancy shall continue only for such period as may be necessary to make an appointment through certification and shall not exceed 180 calendar days in a twelve-month period, except that an extension of 180 calendar days may be authorized by the director when an examination to fill such vacancy was announced and recruitment has failed to produce at least five available eligibles.
 - (2) Provisional appointment to a temporary vacancy may continue for the specific period of time needed to complete the temporary work, but not to exceed one year.
 - (3) The person selected for appointment meets the minimum qualification requirements for the class.
 - (4) A provisional appointment shall be effective for a maximum period of 30 calendar days after the certification of eligibles to fill the vacancy is made.
 - (5) The person selected for appointment may be given another provisional appointment in the same class or in another class, provided that both provisional appointments shall not exceed an aggregate of 180 calendar days in a twelve-month period, except as provided in this section. Such person may not be given another provisional appointment to any position in any class until a period of one year has elapsed from the termination of the last provisional appointment.
- (b) A regular employee may, while serving a provisional appointment be terminated or permitted to return to the former position or another position in the former class in the department where the employee last held a permanent appointment and shall be restored as though the employee had remained in the position continuously. [Eff Jul 01 2002] (Auth: RCH §§6-1102, 6-1105, 6-1106; HRS §76-17) (Imp: §6-1106)

§3-39 Short term appointment.

Short term appointments may be made to fill positions temporarily to prevent the stoppage of essential public business. Such appointments shall not exceed ten working days, provided the director for good cause may extend such appointments for a total appointment period not to exceed thirty calendar days. [Eff Jul 01 2002](Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-40 Limited term appointment.

- (a) Limited term appointments may be made to fill temporary positions or temporary vacancies in permanent positions or a position in an internship or apprenticeship program or training program under a limited term appointment.
- (b) These types of positions may be converted to initial probationary status to the allocated level of the position at the successful conclusion of the internship, apprentice program or training program.
- (c) The name of a person who is selected for a limited term appointment shall not be removed from the eligible list because of such appointment if the list used was for a permanent vacancy.
- (d) Non-regular employees granted a limited term appointment shall not be entitled to rights of a regular employee while appointed into a temporary position or temporary vacancy in a permanent position.
- (e) A regular employee granted a limited term appointment shall, upon termination of the appointment, be reinstated in the position in which the employee last held permanent appointment.
- (f) Limited term appointments may be made with the approval of the appointing authorities concerned and the director for a specific duration to fill a temporary need but not to exceed two years, provided there is no break in service. Should the need for temporary service continue beyond the two years, the appointment may be extended on a yearly basis or a shorter duration with the approval of the appointing authorities concerned and the director.
- (g) For employees originally appointed from an appropriate eligible list: An employee filling a permanent position temporarily vacant or a temporary position may be given [a] probationary appointment in the same or related position in the same class within the department if it later develops that the vacancy will be permanent or that the temporary position will become permanent and the temporary period of service immediately preceded the change to probationary status. The director must certify that the action is reasonable and to the benefit of the service.
- (h) For employees appointed from an internal departmental competitive examination: An employee filling a permanent position temporarily vacant or a temporary position may be given a probationary appointment in the same position or to another position in the same class if it later develops that the vacancy will be permanent or that the temporary position will become permanent, provided the condition of permanency is stated in the vacancy announcement, and the temporary period of service immediately preceded the change to probationary status. The director must certify that the action is reasonable and to the benefit of the service.
- (i) If the employee elects to continue on a temporary appointment through an extension of the limited term appointment, the employee shall have return rights to the position in which the employee last held permanent appointment, provided that prior to the start of the extension of the limited term appointment the employee submits a written request and receives written approval for the employee's return rights from the department head who has control of the employee's last held permanent appointment. If the department head who has control of the employee's last held permanent appointment does not give written approval for the employee's return rights, the employee shall be terminated from service at the end of the extension of the limited term appointment. The requirement for written approval of an employee's return rights shall apply to each extension of a limited term appointment made. [Eff Jan 20 2012](Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§3-41

§3-41 Persons ineligible for appointment or promotion.

A person shall be ineligible for any appointment or promotion in the civil service for a specified period of time as determined appropriate by the director for reasons including, but not limited to the following:

- (1) Deception, fraud, or providing false or misleading statements of material facts in the application or examination process.
- (2) Unauthorized or improper assistance in an examination.
- (3) A determination of unsuitability for employment.

[Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 78-2.6, 831-3.1)

DEPARTMENT OF HUMAN RESOURCES

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 4

CLASSIFICATION AND COMPENSATION SYSTEMS

§4-1 Statement of policy

Subchapter 1 Classification Systems

§4-2 Development and maintenance of classification systems

§4-3 Establishment of classification standards

§4-4 Procedures for classification

§4-5 Classification of positions

§4-6 Effective dates of classification actions

§4-7 Administrative reviews of classification actions

§4-8 Position descriptions

§4-9 Classification actions and merit principles

§4-10
to

§4-19 RESERVED

Subchapter 2 Compensation Systems

§4-20 Assignment of new classes to pay ranges

§4-21 Administrative reviews of initial pricing actions

Historical Note: Chapter 4 of part 2 is based substantially on chapter 4 of part 1 of the rules of the civil service commission.

§4-1 Statement of policy.

The purpose of this chapter is to develop and maintain systems within the city for the objective, consistent, and timely classification of all civil service positions and for the reasonable and consistent assignment of classes of positions to pay ranges. The systems so established shall be based on merit, and contribute to the selection and retention of public employees by compensating them in accordance with law. The systems or any portions thereof may be extended to non-civil service positions as required by law or for the good of the service. [Eff Jul 01 2002] (Auth: HRS §§76-1, 76-17) (Imp: HRS §§76-1, 76-12, 76-13, 76-13.5)

SUBCHAPTER 1

CLASSIFICATION SYSTEMS

§4-2 Development and maintenance of classification systems.

The director shall establish, implement, and maintain one or more classification systems covering all civil service positions, not otherwise exempted by rules. The classification systems shall be constructed with the objective of achieving equal pay for equal work as provided in section 76-1, HRS. The duties and responsibilities assigned to positions and other factors necessary to a proper understanding of their work are to be documented in official position descriptions prepared by the affected department. In establishing, implementing and maintaining the classification systems, the director may inquire at any time into the work of positions, their minimum qualification requirements and other relevant factors. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 76-13.5)

§4-3 Establishment of classification standards.

- (a) The director shall establish standards for the development and maintenance of classification systems relative to position descriptions, class specifications, and other matters.
- (b) The director is authorized to establish, revise, or abolish classes in order to maintain the classification systems. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 76-13.5)

§4-4 Procedures for classification.

Authority to develop procedures for the establishment, implementation and maintenance of the classification systems is vested with the director. Governing procedures shall apply to all relevant aspects including position descriptions, authorizations, supporting documents, standards of adequacy, and submittal of classification requests. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 76-13.5)

§4-5 Classification of positions.

- (a) The director shall:
 - (1) Place any position subject to this rule into an appropriate class; and
 - (2) Reallocate any position from one class to another class, whenever warranted by material changes in position duties and responsibilities or class allocation standards, or to correct an error.
- (b) Each position shall be placed in a class consistent with the nature and level of its duties, responsibilities, and minimum qualification requirements.
- (c) The director may establish standards and procedures and delegate to departments authority to place their own positions into existing classes. Post audit shall be made of departments' exercise of classification authority. The director may rescind or otherwise correct any action taken, as appropriate, and may withdraw the authority when it is determined that continued delegation is not in the best interest of the system.
- (d) The director may approve the temporary reallocation of a position because of emergency, unusual, unique, or other special conditions. When the conditions no longer apply, the appointing authority shall promptly discontinue the temporary reallocation and notify the director of the discontinuance. Upon discontinuance, and

in any event no later than the ending date that was authorized by the director for such reallocation, the position shall revert to its former classification status.

- (e) The incumbent of a position that is reallocated shall be required to meet the minimum qualification requirements established for the class to which the position is reallocated, including for temporary reallocations.
- (f) The reallocation downward of a filled position for disciplinary, involuntary, or voluntary reasons, or to avoid a layoff, or because of a reorganization or injury or illness, shall be so specified by the appointing authority and treated as if a demotion for the specified purpose took place. Whatever procedures and requirements apply to the respective demotion process shall also apply to the corresponding reallocation downward action. [Eff Jul 01 2002] (Auth: HRS §§76-5, 76-17) (Imp: HRS §§76-5, 76-12, 76-13, 76-13.5, 76-16)

§4-6 Effective dates of classification actions.

The effective dates of classification actions shall be as follows:

- (1) The effective date of the initial allocation of a new position shall be the date action is officially taken.
- (2) The effective date of a reallocation action on an existing position shall be the first day of the pay period immediately following the date the request for reallocation was filed with the director or the director's designee, except as provided below:
 - (A) The effective date of a reallocation downward of a filled position shall be the first day of the pay period immediately following the date action is officially taken provided that at least ten calendar days notice is provided to the employee.
 - (B) The effective date of a reallocation based on changes due to reorganization shall be no earlier than the first day of the pay period immediately following the date the reorganization was officially approved.
 - (C) The effective date of a reallocation, when the review is initiated by the director, shall be the first day of the pay period immediately following the deadline date set by the director for submission of current position descriptions, or such other date as the director may deem equitable.
 - (D) The beginning and ending effective dates of a temporary reallocation shall conform to the dates the temporary duties and responsibilities are actually assigned and assumed, and subsequently removed, as certified by the appointing authority and approved by the director.
 - (E) An effective date, earlier than the date of receipt, may be authorized by the director when deemed equitable. Such retroactive effective date shall not be earlier than six months prior to the date the request for reallocation was filed with the director or the director's designee nor shall it be earlier than the date of reorganization approval. Whenever a request is made for a retroactive date, the department head shall submit appropriate data in sufficient detail to support the request.
 - (F) The effective date of a reallocation may be adjusted by the director in situations not covered above for good reason as the director may deem equitable.
- (3) In the event a classification appeal to the civil service commission is upheld, the effective date of the commission's action shall be as provided in paragraph (1) or (2). [Eff Jan 20 2012] (Auth: HRS §76-17) (Imp: RCH HRS §§76-12, 76-13, 76-13.5)

§4-7

§4-7 Administrative reviews of classification actions.

- (a) An administrative review is conducted by the director to re-evaluate a classification action on a position. It is therefore confined to the duties and responsibilities assigned to the position at the time the position description was prepared, and which were the basis for the classification action taken. Subsequent changes in duties and responsibilities cannot be the basis for a request for administrative review, but must be reported on another revised position description and submitted for a separate classification study and action.
- (b) A request for an administrative review may be made by an incumbent of the position or the appointing authority. The incumbent or the appointing authority may have a representative request the administrative review on their behalf. The request shall comply with the following:
- (1) The request shall contain the specific reasons for disagreement with the classification action taken by the director;
 - (2) The request shall state the classification action requested along with appropriate justification for the requested classification action;
 - (3) The request shall be filed in writing with the director within ten calendar days following the date the notice of classification action was sent to the affected appointing authority and incumbent; and
 - (4) Any other requirement established by the director.
- (c) Following the administrative review, the director shall take any action deemed appropriate, which may include rescinding the earlier action and taking a different classification action. The affected appointing authority, the incumbent, and any designated representative shall be notified in writing of the action taken within ten calendar days after the administrative review process is completed. Information on filing an appeal to the Civil Service Commission shall accompany the written decision.
- (d) The director shall establish procedures to carry out the provisions of this section. [Eff Jul 01 2002] (Auth: HRS §§76-13.5, 76-17) (Imp: HRS §§76-12, 76-13, 76-13.5)

§4-8 Position descriptions.

The duties and responsibilities assigned to a position shall be accurately reflected in an official position description. Revised position descriptions shall be submitted on a timely basis if significant changes in the duties and responsibilities of a position are made. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§4-9 Classification actions and merit principles.

Classification actions effected shall be consistent with the principles of the merit system. In the event other more appropriate personnel processes are not available, the appointing authority may request the reallocation of a position in lieu of promoting or demoting the affected incumbent, provided the basic principles and requirements governing promotions and demotions, as applicable, are followed. [Eff Jul 01 2002] (Auth: HRS §§76-1, 76-17) (Imp: RCH HRS §§76-1, 76-12, 76-13)

§4-10 to §4-19 RESERVED

SUBCHAPTER 2
COMPENSATION SYSTEMS

§4-20 Assignment of new classes to pay ranges.

The director shall assign new classes to appropriate pay ranges in the compensation plans, consistent with policies and standards established in accordance with statute and the following principles:

- (1) Equal pay for equal work shall apply between classes in the same bargaining unit among jurisdictions for those classes determined to be equal through systematic classification of positions based on objective criteria and adequate job evaluation, unless it has been agreed in accordance with chapter 89, HRS, to negotiate the repricing of classes.
- (2) Permanent and continual exposure to unusually hazardous working conditions may be recognized as a factor in the assignment of classes to pay ranges. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-1, 76-12, 76-13)

§4-21 Administrative reviews of initial pricing actions.

- (a) An administrative review is conducted by the director to re-evaluate an initial pricing action on a new class. It is therefore confined to the duties and responsibilities assigned to the position(s) at the time the position description(s) was prepared, and which were the basis for the initial pricing action taken. Subsequent changes in duties and responsibilities cannot be the basis for a request for administrative review, but must be reported on another revised position description and submitted for a separate classification study and action.
- (b) A request for an administrative review may be made by an incumbent of the position or the appointing authority. The incumbent or the appointing authority may have a representative request the administrative review on their behalf. The request shall comply with the following:
 - (1) The request shall contain the specific reasons for disagreement with the initial pricing action taken by the director;
 - (2) The request shall state the pricing action requested along with appropriate justification for the requested pricing action;
 - (3) The request shall be filed in writing with the director within ten calendar days following the date the notice of initial pricing action was sent to the affected appointing authority and incumbent; and
 - (4) Any other requirement established by the director.
- (c) Following the administrative review, the director shall take any action deemed appropriate, which may include rescinding the earlier action and taking a different initial pricing action. The affected appointing authority, the incumbent, and any designated representative shall be notified in writing of the action taken within ten calendar days after the administrative review process is completed. Information on filing an appeal with the Civil Service Commission shall accompany the written decision.
- (d) The director shall establish procedures to carry out the provisions of this section. [Eff Jul 01 2002] (Auth: HRS §§76-13.5, 76-17) (Imp: HRS §§76-12, 76-13)

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 5

EXEMPTIONS FROM CIVIL SERVICE

§5-1 General provisions

§5-2 Authority to exempt

Historical Note: Chapter 5 of part 2 is based substantially on chapter 5 of part 1 of the rules of the civil service commission.

§5-1 General provisions.

- (a) This chapter applies to those positions, and persons in those positions, and persons providing personal services which are by law excepted from all or part of the provisions of the civil service law.
- (b) All positions and persons exempted from civil service are excluded from the requirements of selection by merit competition and from civil service status but should be fully qualified by experience and ability to perform the duties of the position or personal services.
- (c) Except as provided by law, inclusion under the City classification systems may not be applicable.
- (d) At the time of their application for employment and as a condition of eligibility for continued employment, persons shall be citizens, nationals or permanent resident aliens of the United States, or deemed eligible for employment under Federal law, and residents or former residents of the State with the exceptions as provided by section 78-1, HRS. [Eff Jul 01 2002] (Auth: HRS §§76-17), 78-1) (Imp: HRS §§76-13,76-16, 78-1, RCH §§4-104.4, 6-1103, 6-1104)

§5-2 Authority to exempt.

- (a) The director shall exempt positions, persons or personal services in accordance with law upon finding that the conditions and requirements of law are met.
- (b) The director may establish standards and procedures for the exemption of positions.
- (c) The director may revoke a previously authorized exemption when the particular position or services no longer meet the criteria or conditions for exemption. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §76-16, RCH §§6-1103, 6-1104)

DEPARTMENT OF HUMAN RESOURCES

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 6

COMPENSATION ADMINISTRATION

- §6-1 Applicability
- §6-2 General provisions
- §6-3 Compensation adjustments upon appointment
- §6-4 Compensation adjustments upon promotion
- §6-5 Compensation adjustments upon demotion
- §6-6 Compensation adjustments upon transfer
- §6-7 Compensation adjustments upon reallocation
- §6-8 Temporary assignment
- §6-9 Temporary differential pay
- §6-10 Compensation adjustments for employees with compression differential
- §6-11 Performance based incentive pay programs

Historical Notes: Chapter 6 of part 2 is based substantially on chapter 6 of part I of the rules of the civil service commission.

§6-1 Applicability.

Compensation adjustments for movements between bargaining units or not otherwise covered by applicable collective bargaining agreements or executive orders shall be in accordance with these rules. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 89-1, 89C-1, 89C-3)

§6-2 General provisions.

- (a) Compensation adjustments not expressly provided for, but necessitated by authorized personnel movements or situations relating to the administration of the compensation law shall be made by the director; provided that the adjustments are not inconsistent with the general intent and provisions of the civil service and compensation rules, laws, collective bargaining agreements, executive orders, or policies.
- (b) If the effective date of more than one personnel action coincides, compensation adjustments shall be made in accordance with the appropriate collective bargaining agreement or executive order. For all other employees, compensation adjustments shall be made in the following order:
 - (1) Step movement;
 - (2) Negotiated wage increase or wage increase granted by an executive order;
 - (3) Changeover to a new pay schedule;
 - (4) Repricing (not to include initial pricing);
 - (5) Promotion;
 - (6) Reallocation; and
 - (7) Other personnel actions.
- (c) A leave of absence without pay shall end upon the day before the first working day an employee properly reports for duty, and an employee shall be entitled to receive

compensation as of the first working day the employee properly reports for duty. Each calendar day from the beginning to the end of an employee's leave of absence without pay shall be charged as leave without pay; provided that, an employee who is granted a leave of absence without pay and who returns to duty after being absent from work for only one working day or less shall be charged for one day of leave of absence without pay or less, as applicable, even though one or more scheduled or normal non-working days or a holiday may have preceded the employee's return to duty.

- (d) A new hire shall be compensated for services rendered as of the first day the employee reports to duty.
- (e) An employee who separates from the service without having worked on all scheduled working days for that month shall be compensated up to the employee's last day of work.
- (f) An employee who separates from the service after having worked on all scheduled working days for that month shall receive a full month's compensation.
- (g) An employee who suffers a personal injury arising out of and in the course of employment and covered under chapter 386, HRS, shall be credited for a full day's work on the day of the injury regardless of the time the employee is injured.
- (h) An employee who initially was properly compensated following a promotion, the adoption of a new pay schedule, a temporary assignment, pricing or repricing, or any other personnel action affecting pay, shall not be required to make reimbursement when it is found subsequently that an overpayment in salary occurred due to the retroactive feature of a position classification action. However, the proper compensation adjustment shall be made as of the first day of the pay period immediately following the date action is officially taken by the director.
- (i) If an employee with a compression differential or a temporary differential receives an upward compensation adjustment due to a promotion, reallocation, or repricing, the reduction or termination of the differentials shall be made in the following order:
 - (1) Temporary differential; and
 - (2) Compression differential. [Eff Jul 01 2002] (Auth: HRS §§76-17; RCH §§4-105, 6-1109) (Imp: HRS §§76-12, 76-13)

§6-3 Compensation adjustments upon appointment.

- (a) All initial appointments shall be made at the first step or minimum rate of the appropriate pay range, except as provided by subsections (b), (c) and (d) below.
- (b) A civil service employee moving to the city through an inter-governmental movement may be compensated above the minimum step/rate with prior approval of the director. The amount of compensation shall be warranted and reasonable, based on evaluation of the employee's qualifications that are specific and pertinent to the position; operational and organizational need; existing staffing and compensation levels; and other related and appropriate factors. The amount of basic compensation shall not exceed that provided by rules governing promotion, transfer or demotion, nor exceed the maximum step/rate of the appropriate pay range.
- (c) Appointments to critical-to-fill or labor shortage positions may be made above the minimum step/rate of the appropriate pay range with prior approval of the director. The amount of compensation shall be warranted and reasonable, based on such factors as described in (b) above; and shall not exceed the maximum step/rate of the appropriate pay range.
- (d) Appointments to positions assigned to broad band compensation systems shall be made in accordance with program parameters and requirements. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-22.5, 76.23.5; RCH §6-1109) (Imp: HRS §§76-1, 76-12, 76-13, 76-22.5)

§6-4 Compensation adjustments upon promotion.

- (a) The basic rate of pay in the higher pay range for a regular employee who is promoted shall be determined in the following manner:
- (1) If the promotion is to other than a salary schedule with single rate pay ranges or a salary schedule with equal rates of compensation at the corresponding salary ranges and steps, the employee shall be compensated at the lowest step in the higher pay range which exceeds the employee's basic rate of pay by five per cent. If there is no step in the higher pay range which exceeds the employee's basic rate of pay by at least five per cent, the employee shall be compensated at the maximum step in the higher pay range, or at the employee's basic rate of pay, whichever is greater.
 - (2) If the promotion is to a salary schedule with single rate pay ranges, the employee shall be compensated at the single rate in the higher pay range.
 - (3) If the promotion is to a salary schedule with equal rates of compensation at the corresponding salary ranges and steps, the employee shall be compensated as follows:
 - (A) For promotions involving a movement of three (3) or less pay ranges, the employee shall be compensated at the corresponding step in the higher pay range.
 - (B) For promotions involving a movement of more than three (3) pay ranges, the employee shall be compensated at the step in the higher pay range which is equal to the rate for promotions involving three (3) pay ranges. If this rate falls below the minimum step, the employee shall be compensated at the minimum step of the higher pay range.
- (b) A regular employee who is released from a position while serving a temporary appointment, new probationary or provisional appointment and is returned to the position the employee last held a permanent appointment shall be compensated as though the employee had remained in the former position continuously.
- (c) A new probationary employee who is promoted shall have the compensation adjustment made based on the rate that the employee was receiving in the position in which the employee last held a permanent appointment. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §§6-1109, 6-1111) (Imp: HRS §'§76-1, 76-12, 76-13)

§6-5 Compensation adjustments upon demotion.

- (a) A regular employee who is granted a voluntary demotion shall have the employee's basic rate of pay reduced by one of the following methods:
- (1) If the voluntary demotion is to other than a salary schedule with single rate pay ranges or a salary schedule with equal rates of compensation at corresponding pay ranges and steps, the employee shall be compensated at the highest step in the lower pay range with a rate which is not greater than ninety-five per cent of the employee's basic rate of pay. If there is no step in the lower pay range with a rate which is not greater than ninety-five per cent of the employee's basic rate of pay, the employee shall be compensated at the minimum step.
 - (2) If the voluntary demotion is to a salary schedule with single rate pay ranges, the employee shall be compensated at the single rate in the lower pay range.
 - (3) If the voluntary demotion is to a salary schedule with equal rates of compensation at the corresponding pay ranges and steps, the employee shall be compensated as follows:

- (A) For voluntary demotions involving a movement of three (3) or less pay ranges, the employee shall be compensated at the corresponding step in the lower pay range.
 - (B) For voluntary demotions involving a movement of more than three (3) pay ranges, the employee shall be compensated at the step in the lower pay range which is equal to the rate for voluntary demotions involving three (3) pay ranges. If this rate falls above the maximum step of the lower pay range, the employee shall be compensated at the maximum step of the lower pay range.
- (b) Upon return to the position in which the employee last held a permanent appointment, a regular employee who is granted a voluntary demotion on a temporary or provisional appointment basis, shall be compensated as though the employee had remained in the former position continuously.
 - (c) An employee who is serving a new probationary period when a voluntary demotion occurs, shall have a compensation adjustment made based upon the rate the employee was receiving in the position in which the employee last held a permanent appointment.
 - (d) An employee who receives a disciplinary demotion or who is involuntarily demoted shall have the employee's basic rate of pay reduced by one of the following methods:
 - (1) If the demotion is to other than a salary schedule with single rate pay ranges, the employee's basic rate of pay shall be reduced to the corresponding step in the lower pay range or to any lower step deemed appropriate by the appointing authority. When there is no corresponding step in the lower pay range, the employee's basic rate of pay shall be reduced to the highest step in the lower pay range with a rate which is not greater than ninety-five per cent of the employee's basic rate of pay. At the discretion of the appointing authority, the employee's compensation may be further reduced to a step with a rate which is less than ninety-five per cent of the employee's existing basic rate of pay. In no event shall an employee be compensated below the minimum rate in the lower pay range.
 - (2) If the demotion is to a salary schedule with single rate pay ranges, the employee shall be compensated at the single rate in the lower pay range.
 - (e) An employee who receives a disciplinary demotion or an involuntary demotion on a limited term basis shall be compensated as though the employee received a regular demotion; provided that upon termination of a limited term demotion the employee shall be compensated as though the employee had remained in the former position continuously.
 - (f) A regular or initial probationary employee or a new probationary employee following a promotion or a demotion or a reallocation who receives a demotion due to an injury or illness sustained while performing the employee's assigned duties and responsibilities shall retain the employee's existing basic rate of pay; provided that:
 - (1) If the employee's existing basic rate of pay falls between two steps in the lower pay range, the employee shall be compensated at the next lower step and shall be eligible for temporary differential (TD) pay.
 - (2) If the employee's existing basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges in the lower pay range, the employee shall be compensated at the maximum step or the single rate, as applicable, and shall be eligible for temporary differential (TD) pay.

- (3) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable.
- (g) An employee who receives a demotion other than as a result of an injury or illness sustained while performing the employee's assigned duties and responsibilities shall be compensated as provided below:
 - (1) An employee who has fifteen or more years of service in the city civil service shall retain the employee's existing basic rate of pay; provided that:
 - (A) If the employee's existing basic rate of pay falls between two steps in the lower pay range, the employee shall be compensated at the next lower step and shall be eligible for temporary differential (TD) pay.
 - (B) If the employee's existing basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges in the lower pay range, the employee shall be compensated at the maximum step or the single rate, as applicable, and shall be eligible for temporary differential (TD) pay.
 - (C) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable.
 - (2) An employee with at least five years but less than fifteen years of service in the city civil service shall retain the employee's existing basic rate of pay for a period beyond the effective date of the demotion as provided below:

<u>Years of Service</u>	<u>Months of Compensation Retention</u>
5	12
6	14
7	16
8	18
9	20
10	22
11	24
12	26
13	28
14	30

- (A) If the employee's existing basic rate of pay falls between two steps in the lower pay range, the employee shall be compensated at the next lower step and shall be eligible for temporary differential (TD) pay.
- (B) If the employee's existing basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges in the lower pay range, the employee shall be compensated at the maximum step or the single rate, as applicable, and shall be eligible for temporary differential (TD) pay.
- (C) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable.

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- (3) The basic compensation of an employee with less than five years of service in the city civil service or an employee whose retention period as prescribed in paragraph (2) has expired, shall be adjusted to the highest step in the lower pay range not exceeding the employee's existing basic rate of pay.
- (h) An employee who receives a demotion in order to avoid being laid off or due to a reorganization shall continue at the employee's existing basic rate of pay; provided that:
- (1) If the employee's existing basic rate of pay falls between two steps in the lower pay range, the employee shall be compensated at the next lower step and shall be eligible for temporary differential (TD) pay.
 - (2) If the employee's existing basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges in the lower pay range, the employee shall be compensated at the maximum step or the single rate, as applicable, and shall be eligible for temporary differential (TD) pay.
 - (3) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §6-1109) (Imp: HRS §§76-1, 76-12, 76-13)

§6-6 **Compensation adjustments upon transfer.**

- (a) An employee who is transferred shall continue at the employee's existing basic rate of pay; provided that:
- (1) If the employee's existing basic rate of pay falls between two steps of the pay range, the employee shall be compensated at the next lower step. An employee whose compensation is so decreased shall be entitled to retain the difference between the employee's existing basic rate of pay and the adjusted basic rate of pay, and the amount retained shall be considered as temporary differential (TD) pay.
 - (2) If the employee's basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the maximum step or the single rate, as applicable. An employee whose compensation is so decreased shall be entitled to retain the difference between the employee's existing basic rate of pay and the adjusted basic rate of pay, and the amount retained shall be considered as temporary differential (TD) pay.
 - (3) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable.
- (b) A regular employee who is released from a position while serving a new probationary period, limited term, or provisional appointment and is returned to the position from which the employee was transferred shall be compensated as though the employee had remained in the former position continuously. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §6-1109) (Imp: HRS §§76-12, 76-13)

§6-7 **Compensation adjustments upon reallocation**

- (a) An employee occupying a position which is reallocated upward, whether permanently or temporarily, shall be compensated as though a promotion had been made.

- (b) The compensation of an employee occupying a position reallocated downward shall be determined in the following manner:
 - (1) An employee retained in a position reallocated downward other than for reasons specified in paragraphs (2), (3), (4), (5) and (6) below shall be compensated in accordance with section 6-5(f).
 - (2) An employee occupying a position which is reallocated downward for voluntary reasons shall be compensated in accordance with section 6-5(a).
 - (3) An employee occupying a position which is reallocated downward for disciplinary or involuntary reasons shall be compensated in accordance with section 6-5(d).
 - (4) An employee occupying a position reallocated downward as a result of an injury or illness sustained by the employee while performing the employee's assigned duties and responsibilities shall be compensated in accordance with section 6-5(f).
 - (5) An employee occupying a position reallocated downward due to an injury or illness sustained by the employee other than in the course of performing the employee's assigned duties and responsibilities shall be compensated in accordance with section 6-5(g).
 - (6) An employee occupying a position which is reallocated downward due to a reorganization shall be compensated in accordance with section 6-5(h).
- (c) For a reallocation not covered by subsections (a) or (b) above, the employee in the position shall be compensated in accordance with section 6-6.
- (d) A new probationary employee who is reallocated shall have a compensation adjustment based on the rate that the employee received in the new probationary position.
- (e) Whenever the reallocation as prescribed in subsection (a) above is retroactive in its effect, employees who occupied or occupy the position within the period covered by the retroactive date, and who performed the duties of and met the minimum qualifications for the position at the higher class, as determined by the director, shall be entitled to receive retroactive pay adjustments for the period of appointment to the position.
- (f) If the incumbent of a reallocated position is ineligible for appointment to a position in the class to which the employee's position has been reallocated, the employee may be promoted, transferred or demoted, if eligible, from the position in which the employee last held permanent status, but the employee shall receive compensation for the time actually served in the position as reallocated as though a temporary assignment had been made.
- (g) Upon discontinuance of a temporary reallocation, the employee shall return to the employee's former rate of pay as though the temporary reallocation had not taken place. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §6-1109) (Imp: HRS §§76-12, 76-13; RCH §6-1109)

§6-8 Temporary assignment.

- (a) Compensation for temporary assignment shall be allowed under any one of the following circumstances:
 - (1) The incumbent of the position is temporarily not available to perform the duties of the employee's position.
 - (2) The incumbent of the position is serving on a temporary assignment.
 - (3) A vacancy exists in a position for which there is no appropriate eligible list but the compensation for the temporary assignment shall not exceed 120 working

days in a 12-month period; provided however that the temporary assignment may be extended for 60 days with the approval of the director. If however, there is an appropriate eligible list, compensation for the assignment shall be only for the period until an appointment can be made from the list. The 120-day limitation shall not apply to vacant department head or deputy department head positions.

- (b) Compensation for temporary assignment shall be allowed when an employee is temporarily assigned to perform the duties of a position in another department and this assignment is made with the concurrence of the two appointing authorities concerned.
 - (c) Compensation for temporary assignment shall be as follows:
 - (1) Except as provided in subparagraphs (A) and (B), the basic rate of an employee who performs temporary assignment involving a higher position or higher rate of pay or in a position in a higher pay range shall be adjusted as though a formal appointment had been made; except that, any compression differential or temporary differential which the employee is receiving shall not be added to the basic rate of pay, but shall be retained by the employee while performing the temporary assignment:
 - (A) Exclusions as provided for in subsection (d).
 - (B) Deputy or assistant department heads who are covered under these rules and who are duly designated as acting department head and perform temporary assignment to the department head positions shall be compensated after 10 consecutive working days of the temporary assignment.
 - (2) A new probationary employee who receives a temporary assignment to a higher class shall have the compensation adjustment made based on the rate that the employee received in the new probationary position.
 - (3) An employee who performs a temporary assignment involving a position in the same or lower rate of pay or pay range shall continue to be compensated at the employee's existing basic rate of pay, prior to the temporary assignment; provided that, if the employee's existing basic rate of pay falls below the minimum step, the employee shall be compensated at the minimum step.
 - (d) Compensation adjustments shall not be provided for the following:
 - (1) An employee whose position includes assuming the duties and responsibilities of another employee's position in the absence of the other employee and which assignment is recognized in the employee's position classification and pricing.
 - (2) An employee who performs duties in accordance with the terms of a formal training agreement entered into with the employee's department head and approved by the director.
- [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §6-1109) (Imp: HRS §§76-12, 76-13)

§6-9 Temporary differential pay.

- (a) An employee shall be eligible for temporary differential pay (herein referred to as TD pay) in the event of a demotion due to injury or illness, a demotion to avoid layoff, a demotion due to reorganization, a transfer, a reallocation, a repricing, or initial pricing action which results in a lower basic rate of pay. The amount of TD pay shall be determined by computing the difference between the employee's existing basic rate of pay and the employee's new basic rate of pay.

- (b) The TD pay shall not be considered part of an employee's basic rate of pay.
- (c) The TD pay shall be reduced by an amount equal to any adjustment in the employee's basic rate of pay due to promotion, or any upward reallocation, repricing or initial pricing actions. When the adjustment due to these actions is greater than or equal to the TD pay, the TD pay shall be terminated.
- (d) When an employee with TD pay is demoted or transferred, or whose position is reallocated to a class in the same or lower pay range, the TD shall be continued in the new pay range. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §6-1109) (Imp: HRS §§76-1, 76-12, 76-13; RCH §6-1109)

§6-10 Compensation adjustments for employees with compression differential.

- (a) When an employee with a compression differential (herein referred to as CD) is promoted, demoted, transferred, or whose position is reallocated to a class outside of the bargaining unit, the CD shall be added to the existing basic rate of pay of the employee for purposes of computing the employee's pay adjustment and shall no be longer carried with the employee as a differential.
- (b) When an employee is released from a probationary, limited-term or other temporary appointment and returns to the position to which the employee last held permanent appointment, the CD shall be restored as though the employee had remained in the former position continuously. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §6-1109) (Imp: HRS §§76-12, 76-13)

§6-11 Performance based incentive pay programs.

Performance based incentive pay programs designed to encourage the achievement of superior performance may be authorized by the appointing authority, with prior approval of the director.

- (a) Programs must be consistent with the merit principle and organizational and operational goals, reflect clear objectives and valid performance measures.
- (b) Programs and awards must be approved by the director, and are subject to annual review.
- (c) The director may, for good reason, terminate programs and awards at any time.
- (d) Incentive pay shall be awarded in the form of a pay differential and is not considered part of an employee's base pay. [Eff Jul 01 2002] (Auth: HRS §§ 76-17, 76-23.5) (Imp: HRS §§76-1, 76-12, 76-13, 76-23.5)

DEPARTMENT OF HUMAN RESOURCES

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 7

EXCLUDED EMPLOYEE ADJUSTMENTS

- §7-1 Purpose
- §7-2 Applicability
- §7-3 Definitions
- §7-4 General provisions
- §7-5 Salary and benefit adjustments for excluded managerial employees
- §7-6 Employee input

§7-1 Purpose.

The purpose of this chapter is to develop and establish a process whereby excluded civil service employees and employee organizations representing them are afforded the opportunity to provide input regarding adjustments made to their wages, hours, benefits or other terms and conditions of employment. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 89C-3)

§7-2 Applicability.

This chapter shall apply to excluded civil service employees. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 89C-3)

§7-3 Definitions.

Unless otherwise indicated by context, words used in these rules are understood to have the following special meanings and are only applicable to this chapter:

"Adjustment" means a change in wages, hours, benefits or other terms and conditions of employment.

"Appropriate authority" means the mayor of the City and County of Honolulu.

"Employee organization" means any organization officially recognized by the City as a representative of employees excluded from collective bargaining.

"Excluded civil service employee" means an employee who has met all requirements for membership in the civil service under section 76-27, HRS, and is not included in any appropriate bargaining unit under section 89-6, HRS. [Eff Jul 01 2002] (Auth: HRS §§76-17, 89C-1.5) (Imp: HRS §§76-12, 76-13, 89C-1.5)

§7-4 General provisions.

- (a) Any adjustment for excluded civil service employees shall be consistent with the merit principle and shall not diminish any rights provided under chapter 76, HRS.
- (b) For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall not be less than those provided under collective bargaining agreements for employees hired on a comparable basis.

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- (c) For employees in positions in the excluded managerial compensation plan, adjustments shall, to the extent practicable, uniformly apply to every excluded employee to ensure fairness.
- (d) The director shall ensure that adjustments for excluded civil service employees result in compensation and benefit packages that are appropriate for what they do and the contribution they make in consideration of the compensation and benefit packages provided under collective bargaining agreements for counterparts and subordinates within the jurisdiction. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 89C-2, 89C-3)

§7-5 Salary and benefit adjustments for excluded managerial employees.

- (a) Salary adjustments for employees in positions in the excluded managerial compensation plan shall be not less than those provided under collective bargaining to officers and employees in the professional and scientific bargaining unit. This shall not preclude additional variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions.
- (b) Non-wage adjustments for employees in positions in the excluded managerial compensation plan shall be not less than those provided employees in the bargaining unit from which the employee is excluded. [Eff Jul 01 2002] (Auth: HRS §§76-12, 76-13, 76-17) (Imp: HRS §§76-12, 76-13, 76-17, 89C-2(5))

Historical Note: Section 7-5 is based on section 6-12 of part 1 of the rules of the civil service commission. [Eff Jul 01 2002]

§7-6 Employee input.

- (a) No change in adjustments for excluded civil service employees that must be executed by executive order shall be made without the opportunity to provide input on the adjustments.
- (b) Prior to the expiration of the applicable bargaining unit's collective bargaining agreement, the director shall solicit input from civil service employees excluded from the appropriate bargaining unit and from any employee organizations on changes to their wages, hours, benefits or other terms and conditions of employment. For employees in the excluded managerial compensation plan, the applicable bargaining unit for purposes of salary adjustments shall be bargaining unit 13.
- (c) The director's recommendations to the appropriate authority on the adjustments provided to excluded civil service employees shall be final and neither employees nor their organizations may appeal the recommendations. [Eff Jul 01 2002] (Auth: HRS §§76-17, 89C-3) (Imp: HRS §§76-12, 76-13, 89C-2, 89C-3, 89C-6)

DEPARTMENT OF HUMAN RESOURCES

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 8

LEAVES

Subchapter 1 Leaves with Pay

- §8-1 Vacation leave
- §8-2 Sick leave
- §8-3 General provisions affecting vacation and sick leave
- §8-4 Military leave with pay
- §8-5 Leave sharing
- §8-6 Sabbatical leave

Subchapter 2 Leaves without Pay

- §8-7 Applicability
- §8-8 Leave without pay to work in an exempt position
- §8-9 Unauthorized leave of absence
- §8-10 Leave pending investigation

SUBCHAPTER 1

LEAVES WITH PAY

Historical Note: Subchapter 1 of chapter 8 of part 2 is based substantially upon chapter 18 of part 2 of the rules of the director of civil service. [Eff Jul 01 2002]

§8-1 Vacation leave.

The following provisions affecting vacation leave shall apply to employees, except those exempt employees employed pursuant to paragraphs (e), (f), (g) and (h), of section 6-1103 and paragraph (f) of section 6-1104 of the Revised Charter of the City and County of Honolulu shall not earn vacation allowance, except as provided for by executive order:

- (1) It shall be the duty of an employee desiring to take vacation to submit to the employee's appointing authority, on a form prescribed by the director of budget and fiscal services, an application before the commencement date of the vacation, in order to enable the appointing authority to make the necessary arrangements for any readjustment of work. An advance notice as is necessary may be prescribed by departmental regulations or policies, which shall be made known to all employees. However, the appointing authority may waive the requirement for advance notice when emergency situations arise.
- (2) No employee shall be granted or permitted to take vacation in any calendar year in excess of ninety working days.
- (3) Vacation, which has not been earned, shall not be granted in advance.

- (4) Transferring to a position in which vacation allowance is not earnable shall be as follows:
 - (A) When an employee is transferred from, or otherwise relinquishes one position in which vacation allowance may be earned, and accepts employment in another position in the service of the City in which vacation allowance may not be earned, the employee may be deemed, for purpose of receiving pay in lieu of vacation, to have terminated the employee's services.
 - (B) In the event, however, that the employee is not eligible under the circumstances to receive pay in lieu of vacation, the acceptance of such new employment shall not of itself have the effect of causing a forfeiture of any vacation allowance to which such employee is then entitled.
- (5) Accumulated vacation allowance after transfer shall be applied as follows:
 - (A) When an employee is transferred from one department or agency to another within the City or to another within the State, the employee may be given credit for the vacation earned or accumulated in the department or agency from which the employee transferred.
 - (B) When an employee transfers or moves from the City to another jurisdiction in the State of Hawaii, the employee may request and receive lump sum payment at the employee's existing rate of compensation for all vacation credits accumulated up to the effective date of the movement and the lump sum payment shall not be construed to mean that the employee has terminated employment in the civil service.
 - (C) Compensation for any period of vacation allowance shall be paid at the rate to which the employee is entitled at the time the allowance is granted.
- (6) Upon separation from the service, payment for vacation allowance shall be pursuant to law.
- (7) This rule shall not be construed to provide for compensation in lieu of vacation allowance when an employee is terminated, whether voluntarily or involuntarily, and is rehired within seven calendar days of such termination. In the event an employee is terminated and receives compensation in lieu of vacation allowance but is rehired within seven calendar days of the termination, the employee shall be required to return such compensation or the rehiring date shall be moved beyond seven calendar from the date of termination.
- (8) An employee of the City who is called or ordered and reports, either voluntarily or involuntarily, for active military duty with a branch of the U.S. Armed Forces shall be deemed to have separated from the City for the purposes of this section. Payment for the employee's vacation allowance will not of itself cause the forfeiture of unused sick leave credits.
- (9) Each appointing authority who decides to terminate the service of any employee in the department, whether such termination is voluntary or involuntary, shall forthwith report to the director of budget and fiscal services, upon forms prescribed by the director of budget and fiscal services, the following information:
 - (A) The recorded accumulation vacation allowance; and
 - (B) The current accumulated vacation allowance earned for the current calendar year up to the date on which the employee is expected to

cease active performance of service, either by reason of termination of service on that date, or commencement of vacation to be taken prior to the final termination.

[Eff Jul 01 2002] (Auth: HRS §§76-17, 78-23; RCH §4-105) (Imp: HRS §§76-12, 76-13, 78-23)

§8-2 Sick leave.

The following provisions affecting sick leave shall apply to employees:

- (1) In the granting of sick leave, the smallest allowable unit shall be .25 hour (15 minutes).
- (2) An employee shall be charged for sick leave for only those hours for which the employee was or would have been scheduled to work. Sick leave shall not be charged on holidays.
- (3) Upon separation from the service, an employee shall forfeit all sick leave allowance accrued and accumulated to the date of the separation except as otherwise provided by section 88-63, HRS. This subsection shall not be construed to provide for the forfeiture of sick leave accumulation when the employee is granted leave without pay, including military leave, or is rehired within seven calendar days in the City service or is reinstated in the City service upon appeal of a discharge.
- (4) The appointing authority is authorized to investigate any absence with pay because of illness or injury and to take disciplinary action whenever there is found a false claim of illness in connection with absence from work by an employee. The appointing authority may require the employee to be examined by the city's designated physician or a private physician of the appointing authority's choice provided the department assumes the cost of the physician's services. The appointing authority, upon the request of the employee, may permit the employee to be examined by a private physician of the employee's choice at the employee's cost. In the event the employee is examined by a private physician, the employee shall request the physician to furnish a report of the findings to the City's designated physician. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) HRS §§76-12, 76-13)

§8-3 General provisions affecting vacation and sick leaves.

- (a) Each appointing authority shall report to the director of budget and fiscal services upon such forms and such times as shall be prescribed by the director of budget and fiscal services, all absences of employees, whether or not the same has been charged to vacation, sick leave or leave without pay, and the dates of return to work following the absences.
- (b) The appointing authority shall be responsible for the application of these rules to the appointing authority's employees.
- (c) After the end of each year, the appointing authority will furnish each employee with a statement of the vacation and sick leave credits remaining as of December 31 of the prior year.
- (d) When an employee in the City resigns a position in one department to accept a position in another department in the City as a result of a transfer (including promotion, demotion, or original appointment) or in the case of any other movement from one department to another in the City, and the employee reports to the new position within seven calendar days thereafter, such employee shall not thereby forfeit any accumulated or earned sick leave allowance that the employee may have

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on credit in the department from which the employee was transferred or moved. If, after the date of such transfer or movement, the employee uses any or all of such sick leave allowance on credit, the appropriation of the department to which the employee is transferred shall bear the entire charge thereof. In no event shall the appropriation of the department from which the employee was transferred or moved be charged for any sick leave taken after the date of transfer or movement.

[Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) (Imp: HRS §§76-12, 76-13)

§8-4 **Military leave with pay.**

- (a) An employee, appointed for six (6) months or more, while on active duty or during periods of camps of instruction or field maneuvers as a member of the Hawaii national guard, air national guard, naval militia, organized reserves, including the officers' reserve corps and the enlisted reserve corps, under call of the President of the United States or the governor of the State, may request and be granted leave with pay status for a period not to exceed fifteen (15) working days in any calendar year.
- (b) If an employee is called to active duty or required to report to camp training or field maneuvers by official military orders a second time within a calendar year, the employee may elect to use up to fifteen working days of the succeeding calendar year; provided that the employee's entitlement to the working days advanced shall be cancelled from the succeeding calendar year, and the employee shall so agree in writing. The employee who is advanced leave shall be required to reimburse the City an amount of pay equivalent to the days advanced in the event the employee leaves City employment or separates from the military prior to completion of a year's service in the succeeding year from which leave was advanced. [Eff Jan 20 2012] (Auth: HRS §76-16.5; 76-17; RCH §4-105) (Imp: HRS §§76-12, 76-13)

§8-5 **Leave Sharing.**

- (a) The director may establish a leave sharing program which will allow employees to donate accumulated vacation leave credits to another employee within the City who has a serious personal illness or injury, or to the employee whose family member has a serious personal illness or injury. The program shall provide for fair treatment, prohibit coercion of employees and ensure that the leave poses no undue hardship on the employer's operations. The city council's presiding officer may establish a leave sharing program for employees of the legislative branch. Family member leaves require approval from the director or the city council's presiding officer.
- (b) As used in this section:
 - (1) "Employee" means any regular, probationary, limited term or exempt employee who has been employed for at least six continuous months with the City and is entitled to accrue and use vacation leave.
 - (2) "Family member" means an employee's parent, parent-in-law, spouse, or child including an adopted child, biological child, or stepchild in a parent child relationship with the employee. The child must be living with and a tax dependent of the employee. Parent means biological or adoptive.
 - (3) "Serious personal illness or injury" means a life threatening illness or injury; or a catastrophic, debilitating illness or injury which incapacitates the employee or employee's family member and prevents the employee from performing the primary duties of his/her position. Further, the medical condition involves either inpatient care (such as hospitalization, hospice, etc.) or continuing treatment by a health care provider; is certified by a competent medical examiner as being the cause of the employee's inability to work or the family member's need for vigilant

medical attention for at least 30 consecutive calendar days; provided that the illness or injury is not covered under chapter 386 or, if covered, all benefits under chapter 386 have been exhausted. The director or the city council's presiding officer may grant exceptions to the thirty consecutive calendar days requirement.

- (c) An employee who wishes to donate accumulated leave credits must not have solicited nor accepted anything of value in exchange for the donation.
- (d) Eligibility to receive shared leave shall be as provided under section 78-26, HRS. In addition, an eligible recipient must have exhausted or is about to exhaust all temporary disability insurance benefits to which the employee is entitled.
[Eff Jul 01 2002] (Auth: HRS §§76-17, 78-26; RCH §4-105) (IMP: HRS §§76-13, 78-26)

§8-6 Sabbatical leave.

- (a) Any employee who has been employed by the State or any County for seven consecutive years upon application to and with the approval of the employee's appointing authority may be granted a sabbatical leave of absence of not more than one year for the purpose of education and training, provided that the two years of employment immediately preceding the application have been with the employee's department. The employee shall have the right to return to the former position at the expiration of the sabbatical leave of absence.
- (b) The appointing authority may grant the employee sabbatical leave of absence upon review and consideration of all of the following:
 - (1) The purpose of the leave is mutually beneficial to the employee and the City.
 - (2) The nature, length and pertinence of educational coursework, research or other professional/educational activity, which the employee plans to undertake during the sabbatical leave, are consistent with the needs of the service.
 - (3) The employee's absence will not adversely affect the operation of the department.
 - (4) The employee's work performance record and seniority (continuous length of service in the civil service).
- (c) Before being granted a sabbatical leave, an employee shall enter into a contract with the appointing authority which shall provide for the following:
 - (1) The employee shall agree to return to work upon termination of sabbatical leave or any other leave which may be granted immediately following the sabbatical leave. If the employee fails to report for work upon termination of sabbatical and any other leave granted, the employee shall refund all moneys received while on sabbatical leave. Upon return from sabbatical leave and any other leave granted, the employee shall agree to work in the appropriate department for a period of two consecutive years. If the employee fails to do so, the employee shall refund all moneys received while on sabbatical leave.
 - (2) An employee granted sabbatical leave shall not engage in any form of employment which interferes with the employee's education and training. All employment shall be approved by the appointing authority.
- (d) The employee on sabbatical leave shall be paid an amount equal to one-half of the basic compensation which the employee was receiving at the commencement of the leave. The payments shall be made in regular monthly installments, the last two of which shall not be made until after returning to work with the jurisdiction which granted the leave.

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- (e) An employee granted sabbatical leave shall not by reason thereof be deprived of any accumulated vacation or sick leave but shall accrue no additional vacation allowance or sick leave during the period of leave.
- (f) Upon the employee's return from sabbatical leave, the employee shall be compensated as though the employee had remained continuously in the position. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) (Imp: HRS §§76-12, 76-13; RCH §4-105)

SUBCHAPTER 2

LEAVES WITHOUT PAY

Historical Note: Subchapter 2 of chapter 8 of part 2 is based substantially on chapter 8 of part 1 of the rules of the civil service commission. [Eff Jul 01 2002]

§8-7 Applicability.

These rules shall apply to exempt and civil service employees, unless otherwise specified. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §04-105) (Imp: HRS §§76-12, 76-13; RCH §4-105)

§8-8 Leave without pay to work in an exempt position.

- (a) An appointing authority with the concurrence of the mayor may grant a regular employee a leave without pay for employment in the following exempt positions in the City government:
 - (1) department head;
 - (2) deputy department head;
 - (3) private secretary to a department head or a deputy department head.
- (b) The leave of absence shall be for no more than the period indicated below:
 - (1) Four years or for the mayor's term of office, whichever is less, for services as a department head.
 - (2) Four years or for the term set by the Fire Commission or Board of Water Supply, whichever is less, for a department head for the Fire Department or Board of Water Supply.
 - (3) Four years or for the department head's term of office, whichever is less, for services as a deputy department head, or as a private secretary to a department head or a deputy department head.
 - (4) Five years or for the term set by the Police Commission whichever is less, for the Police Chief.
 - (5) Five years or for the Police Chief's term of office, whichever is less, for services as a Deputy Police Chief, or as a private secretary to the Police Chief or a Deputy Police Chief.
- (c) A leave of absence may be extended for an additional period not to exceed four years.
- (d) The rights of the employee who is released from the exempt position are as follows:
 - (1) Upon completion of no more than four years of the leave without pay, reinstatement to the position in which the employee last held a permanent appointment. In the event the employee is retained beyond these four years for the transition to a new mayoral term, but for not more than three months, the employee shall retain the reinstatement right to the employee's former civil

service position. Such a three month extension shall not be construed to consider the leave to extend beyond four years for purposes of paragraph (2) below.

- (2) Following more than four years of leave without pay, reinstatement to the employee's former position if vacant or placement in a comparable vacant position.
 - (3) In the event there is no comparable position vacant, the employee shall be placed in the next such vacancy available and the intervening period for a maximum of one year shall be considered as leave without pay. In the event placement is not successful, the employee shall be terminated.
 - (4) Upon reinstatement in the former position or placement in another comparable position, the employee shall be compensated as though the employee had remained continuously in the position in which the employee last held a permanent appointment.
- (e) In applying this rule to the legislative branch of the City, when the term "Mayor" is used, it shall also mean the city council chair and when the term "department head" is used it shall mean the equivalent agency head in the legislative branch. In applying this rule to leaves of absence granted under subsections (b)(2), (b)(4) and (b)(5) when the term "mayoral" is used, it shall also mean "department head" or "Police Chief." In applying this rule, and in applying section (c), to leaves of absence granted under subsections (b)(4) and (b)(5) when the term "four years" is used, it shall also mean "five years." [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) (Imp: HRS §§76-12, 76-13; RCH §4-105)

§8-9 Unauthorized leave of absence.

An employee who is absent from duty without proper authorization shall be placed on unauthorized leave of absence without pay. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) (Imp: HRS §§76-12, 76-13; RCH §4-105)

§8-10 Leave pending investigation

- (a) An employee may be placed on a leave of absence with or without pay pending an investigation of charges that the employee may have committed a work-related offense and/or the employee's presence at the worksite is deemed to be detrimental to the proper conduct of the investigation or the operations of the workplace. Leave without pay under this section shall be in accordance with the following:
 - (1) The employee shall be given an opportunity to respond in writing or in person to the appointing authority or designee as to why the employee should not be placed on leave without pay pending investigation.
 - (2) Notice of the proposed action must be given to the employee in writing and include the reasons for the proposed action, facts supporting the reasons, and the instructions for responding to the proposed action.
- (b) A leave of absence with or without pay pending investigation may be for a period of up to thirty calendar days, provided that for good cause and with the approval of the director, the leave of absence without pay may be extended.
- (c) An employee who has been placed on a leave of absence without pay shall be reinstated without loss of pay and all rights and benefits will be restored as though the employee had not been on leave if the employee is cleared during the investigation or the charge is dropped or not substantiated. In the event the employee is partially cleared, a portion of the leave may be reinstated as appropriate. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) (Imp: HRS §§76-12, 76-13; RCH §4-105)

DEPARTMENT OF HUMAN RESOURCES

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 9

HEALTH AND SAFETY

- §9-1 Medical Guidelines
- §9-2 Kinds of medical examinations
- §9-3 Administration of medical examinations
- §9-4 Failure to meet employment requirements
- §9-5 Health and safety

Historical Note: Chapter 9 of part 2 is based substantially on subchapter 1 of chapter 9 of part 1 of the rules of the civil service commission. [Eff Jul 01 2002]

§9-1 Medical guidelines.

The director is authorized to establish medical guidelines related to performing the essential job functions for the City's classes of work. In establishing these guidelines, the director may consult with medical professionals, the applicable department or appointing authority, or other appropriate specialists. These guidelines will:

- (1) Ensure that persons seeking employment in the city civil service system meet the medical and physical requirements necessary for the safe and efficient performance of the essential functions of the position for which they are being medically evaluated.
- (2) Ensure that employees are able to perform the essential functions of their positions. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-18)(Imp: HRS §§76-12, 76-13)

§9-2 Kinds of medical examinations.

- (a) Pre-employment Medical Examination. A pre-employment medical examination is a medical examination to evaluate the person's ability to satisfactorily perform the essential job functions of the position for which the individual is being hired. The director shall determine whether a pre-employment medical examination is required.
- (b) Medical evaluation. A medical evaluation is a medical examination to evaluate the employee's ability to satisfactorily perform the essential functions of the employee's current position.
 - (1) Periodic medical evaluation shall be required of all employees holding positions in classes for which such examinations are required by law or which the director finds, based on the nature of the work performed or other interests of the City, an evaluation is necessary.
 - (2) The appointing authority may require a medical evaluation whenever it is necessary to determine the employee's ability to safely perform the essential functions of the employee's present position.
 - (3) If an employee is selected for a promotion, transfer or other change to a position in a class for which the medical and physical requirements to perform the essential functions exceed those required for the

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employee's present position, and the director has determined that a medical evaluation is required for the position, the employee shall be medically evaluated prior to appointment. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-18) (Imp: §§76-12, 76-13)

§9-3 Administration of medical examinations.

The City's designated physician shall be responsible for the administration of medical examinations. Upon the request of any applicant or employee, the director may authorize an examination by the person's own physician at the person's own expense. The evaluation to determine whether the person meets the medical requirements for initial appointment or continued employment shall be made by the City's designated physician. Determination of employment action shall be made by the director or appointing authority as provided in these rules. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-18)(Imp: HRS §§76-12, 76-13)

§9-4 Failure to meet employment requirements.

- (a) In determining whether a person is qualified for initial appointment or continued employment, the director or appointing authority shall review medical as well as other pertinent information from the City's designated physician, the individual, or any other appropriate source regarding the person's ability to currently perform the essential functions of the position.
- (b) If it is determined that an applicant does not meet the employment requirements for initial appointment, the applicant shall be disqualified for appointment. The director shall notify the applicant in writing of the reason(s) they are denied from further employment consideration for the position for which they applied.
- (c) If it is determined that an employee does not meet the medical requirements for continued employment, the appointing authority shall notify the director in writing prior to taking any action. Upon concurrence by the director, the appointing authority shall notify the employee in writing of the reason(s) for disqualification and action to be taken.
- (d) The director shall prescribe the procedures on the placement of employees on a city-wide basis whenever, upon medical evaluation, employees do not meet the medical requirements to perform the essential functions of their positions. If there is no suitable position for which an employee meets the minimum qualification and medical requirements, the appointing authority may terminate the employee's employment. Upon termination, the former employee shall be eligible to be placed on the priority placement list, if the employee meets the requirements to be placed on this list, or on the appropriate re-employment list for which the former employee meets the minimum qualifications and medical requirements. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-18)(Imp: HRS §§76-12, 76-13)

§9-5 Health and safety.

- (a) The director may establish health and safety policies, procedures and standards designed to prevent accidents, deaths, illnesses, injuries, and property damage through elimination or reduction of unsafe practices and hazardous conditions.
- (b) The appointing authority is responsible for:
 - (1) Developing written departmental health and safety policies and procedures.
 - (2) Establishing and administering approved health and safety programs in accordance with policies, procedures and standards established by the director or other applicable laws, regulations, guidelines and standards.

- (3) Reporting on health and safety activities of the department as requested by the director. [Eff Jul 01 2002] (Auth: HRS §76-17)(Imp: HRS §§76-12, 76-13)

DEPARTMENT OF HUMAN RESOURCES

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 10

INTERNAL COMPLAINT PROCEDURE,
APPEALS TO THE CIVIL SERVICE COMMISSION

- §10-1 Applicability
- §10-2 Rules applicable to internal complaints
- §10-3 Principles
- §10-4 Required procedures
- §10-5 Appeals to the civil service commission

Historical Note: Chapter 10 of part 2 is based upon chapter 13 of part 1 of the rules of the civil service commission. [Eff Jul 01 2002]

§10-1 Applicability.

This chapter shall apply to applicants and employees of all positions in the city service not exempted by the provisions of sections 6-1103 and 6-1104 of the Revised Charter of the City and County of Honolulu, unless otherwise specified. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 76-14, 76-42)

§10-2 Rules applicable to internal complaints.

- (a) For the purpose of this internal complaint procedure, a " complaint" exists if an applicant or employee alleges that there has been a violation, misinterpretation, or misapplication of a specific provision of a personnel law, regulation, rule or policy relating to:
 - (1) Recruitment and examination;
 - (2) Classification and reclassification of a particular position;
 - (3) Initial pricing of classes;
 - (4) Other employment actions under chapter 76, HRS, including disciplinary actions and adverse actions for failure to meet performance requirements as specified in subsection 76-41(b), HRS, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6, HRS.
- (b) Any applicant or employee alleging a complaint by an action under subparagraph (a)(1) above or any employee covered by chapter 76, HRS, alleging a complaint by an action under subparagraph (a)(2) or (a)(3) above shall be entitled to file an internal complaint. Employees covered by chapter 76, HRS, who are excluded from collective bargaining coverage shall be entitled to file an internal complaint under subparagraph (a)(4) above and for other alleged violations of adjustments provided under chapter 89C, HRS.
- (c) Matters subject to collective bargaining grievance procedures shall not be considered a complaint under this chapter. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: §§76-12, 76-13, 76-14, 76-42)

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§10-3 Principles

- (a) An applicant or employee may, without resorting to formal procedures, discuss informally any problem relating to a complaint pursuant to section 2 above. Expeditious resolution through informal discussions are highly encouraged. A written decision shall be issued to the complainant on the outcome of any efforts to resolve the complaint informally.
- (b) All proceedings relating to the handling of a complaint by a person who is not an employee shall, as far as practicable, be conducted during office hours at times convenient to the complainant. All proceedings relating to the handling of employee complaints shall so far as practicable be conducted during the employee's work hours to permit the employee time off from work with pay.
- (c) No applicant or employee shall be coerced, discriminated against, or have reprisals taken against the applicant or employee for presenting a complaint.
- (d) A complainant shall have the right to be represented by a person or persons of the employee's own choosing at any stage in the presentation of the complaint.
- (e) The specific time limits and procedures as hereinafter provided shall be followed in processing all complaints. Any complaint not filed in accordance with the procedure or within the time limits specified within each step need not be considered by the appropriate authority or the commission. By mutual consent of both parties, any step as hereinafter provided may be waived and/or the time limits within each step may be extended. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 76-14, 76-42)

§10-4 Required procedures

- (a) An applicant or employee may request in writing any relevant information needed to investigate and process a complaint. The appropriate individual who has the authority to act on the complaint shall respond to the request and provide relevant information in the possession of the department, as provided in applicable laws, within ten calendar days after receipt of the written request. An extension to provide the relevant information shall be granted upon the presentation of a reasonable explanation for the request. In the event a dispute arises as to whether or not there is a complaint, a response shall also be provided.
- (b) Informal step.
 - (1) An applicant or employee shall file an informal complaint within 10 calendar days of the alleged violation or after the alleged violation first became known to the applicant or employee. For examination matters a complaint shall be filed within 10 calendar days following the postmark date of the original notice of examination results or the date of the original electronic notice of examination results. For classification and initial pricing actions, a complaint shall be filed within 10 calendar days following the date of the notice of action. The informal step includes the use of any administrative review process.
 - (2) A complaint shall, whenever possible, be discussed informally between the applicant or employee and an appropriate individual who has the authority to act on the complaint and who shall be responsible for contacting the complainant within ten calendar days of receiving the complaint.
 - (3) If it is discovered after filing of the complaint that the matter complained of is not within the authority of the individual with which the complaint was filed to act, the individual shall notify the complainant accordingly and refer the complaint to the appropriate agency, if known.

- (4) A written decision shall be issued to the complainant within 10 calendar days after the completion of the informal step meeting or discussion or completion of the administrative review process. Nothing herein shall preclude departments from establishing their own internal procedures with the approval of the director. The departmental complaint procedure shall culminate in a written decision by the appointing authority or other appropriate authority assigned responsibility for making the final decision on the complaint.
- (5) The appointing authority shall furnish to the director a copy of the complaint when initially filed, shall consult with the director prior to issuing an informal decision, and shall provide to the director a copy of the informal decision.
- (6) If the complaint is denied at the informal step, information on filing a formal complaint with the civil service commission must accompany the written decision.
- (7) The deadline for filing a formal complaint shall be 20 calendar days after receipt of the written response to the informal complaint. [Eff Jan 20 2012] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13, 76-14, 76-42)

§10-5 Appeals to the civil service commission

- (a) The internal complaint procedure shall be exhausted before an appeal is filed with the civil service commission. If the appeal is not under the jurisdiction of the commission, but some other administrative agency or appellate body, the complainant is responsible for the timely filing of such appeal with the appropriate agency regardless of whether the internal complaint procedure under this chapter was used.
- (b) The commission need not consider any complaint which encompasses a different alleged violation than those in the informal step.
- (c) All appeals shall conform to any rules and/or regulations of the commission. The commission's disposition of the complaint shall be final and binding on all persons concerned. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) (Imp: HRS §§76-12, 76-13, 76-14, 76-42)

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 11

RESIGNATION, LAYOFF, AND TERMINATION

§11-1 Purpose

Subchapter 1 Resignation

§11-2 Applicability

§11-3 Notice of resignation

§11-4 Appointing authority discretion to terminate

§11-5 Discipline in lieu of resignation

§11-6 Withdrawal of resignation

§11-7 Resignation in good standing

§11-8 Resignation not in good standing

Subchapter 2 Layoff

§11-9 Applicability

§11-10 Notice of impending layoff; placement rights

§11-11 Retention points

§11-12 Waiver of displacement rights

§11-13 Conditions for placement

§11-14 Placement within the employing agency

§11-15 Citywide layoff action

§11-16 General provisions governing layoffs

§11-17 Waiver of time limits for notices

Subchapter 3 Termination

§11-18 Applicability

§11-19 Termination of employment

Historical Note: Chapter 11 of part 2 is based substantially upon chapter 14 of part 1 of the rules of the civil service commission. [Eff Jul 01 2002]

§11-1 Purpose.

The purpose of this chapter is to provide for orderly, uniform and fair procedures for the non-disciplinary separation of employees from city service. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-13, 76-30)

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SUBCHAPTER 1

RESIGNATION

§11-2 Applicability.

This subchapter shall apply to exempt and civil service employees unless otherwise specified. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-30)(Imp: HRS §§76-13, 76-30; RCH §4-105)

§11-3 Notice of resignation.

- (a) When an employee elects to resign from the service, the employee shall notify the appointing authority through a written notice of resignation at least fifteen calendar days before the effective date of resignation unless the appointing authority waives this requirement.
- (b) Failure to give required notice shall result in forfeiture of the right to placement on a reemployment list .

§11-4 Appointing authority discretion to terminate.

The appointing authority has the discretion to proceed to terminate an employee or consider an employee to have resigned, for any of, but not limited to, the following reasons:

- (a) If an employee does not report to work for fifteen days without notifying the appropriate authority of the employee's employment intentions; or
- (b) The employee submits a resignation prior to, during, or after completion of an investigation; or
- (c) The resignation is not in accordance with section 11-3(a); or
- (d) The employee fails to return to work within fifteen calendar days following the expiration of an approved leave of absence. [Eff Jan 20 2012] (Auth: HRS §§76-17, 76-30)(Imp: HRS §§76-13, 76-30; RCH §4-105)

§11-5 Discipline in lieu of resignation.

If the employee does not report for work without authorization, but, within fifteen days following the last day the employee reported for work expresses a desire to continue employment in writing to the appointing authority, the employee shall not be deemed to have resigned. The appointing authority may take appropriate disciplinary action, including discharge in consideration of the reasons for the employee's absence. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-30) (Imp: HRS §§76-13, 76-30; RCH §4-105)

§11-6 Withdrawal of resignation.

Once a resignation becomes effective, the resignation may not be withdrawn. Prior to its becoming effective, once the resignation is submitted, the resignation may not be withdrawn without the consent of the appointing authority. [Eff Jan 20 2012] (Auth: HRS §§76-17, 76-30)(Imp: HRS §§76-13, 76-30; RCH §4-105)

§11-7 Resignation in good standing.

- (a) A resignation shall be deemed by the appointing authority to be in good standing when the resignation is submitted in accordance with subsection 11-3(a), and the employee is not under investigation or subject to possible discharge or termination action at the time the employee leaves city service.

- (b) A regular employee who performs in a satisfactory manner and who resigns in good standing may, within one year after the effective date of resignation, request that the employee's name be placed on a reemployment list.
 [Eff Jan 20 2012] (Auth: HRS §§76-17; 76-30)(Imp: HRS §§76-13, 76-30; RCH §4-105)

§11-8 Resignation not in good standing.

A resignation shall be deemed not in good standing when an employee is considered to have resigned pursuant to section 11-4. [Eff Jul 01 2002] (Auth: HRS §76-17)(Imp: HRS §§76-12, 76-13, 76-30; RCH §4-105)

SUBCHAPTER 2

LAYOFF

§11-9 Applicability.

This subchapter shall apply to regular civil service employees whose positions are to be abolished or to regular civil service employees who will be displaced by other employees. This subchapter also applies to a replacement who is hired as a regular employee and who is displaced by the return of a regular employee from military leave.

§11-10 Notice of impending layoff; placement rights.

When there is an impending layoff because of lack of work, need, or funds, the appointing authority shall inform the director of the number of employees to be laid off and the class or classes in which the layoffs are to occur. The appointing authority shall notify the affected employees of this in writing as soon as possible but in any case at least ninety calendar days before the impending layoff will take place. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105 (Imp: HRS §§76-12, 76-13)

§11-11 Retention points.

To determine the displacement of another employee, retention points shall be computed on the basis of one point for each full month of city civil service employment and a fraction of a point for a partial month of service up to the day on which work or funds terminate. The computation shall include service time of classes of employees whose functions are transferred from one jurisdiction to another through action of the Legislature and all authorized nondisciplinary leaves of absence. Periods of suspensions and unauthorized leaves of absence from duty shall not be included. A fraction of a month of service shall be used to break ties. When two or more employees in the same class have identical retention scores, the employee with the least service in that class and any higher class shall be laid off first. Retention points shall be computed up to the day on which work or funds terminate. Creditable service for purposes of computing retention points shall include all authorized nondisciplinary leaves of absence; periods of suspensions and unauthorized leaves of absence from duty shall not constitute creditable service. [Eff Jul 01 2002] (Auth: HRS §76-17)(Imp: HRS §§76-12, 76-13)

§11-12 Waiver of displacement rights.

The employee affected by layoff may waive displacement rights, thereby limiting placement to vacant positions. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

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§11-13 Conditions for placement.

- (a) The employee must meet the minimum qualification requirements of the class of the position in which the employee is to be placed.
- (b) The employee is a regular city civil service employee.
- (c) The employee shall have priority for placement in the vacant position to which the employee is referred under the provisions of this section.
- (d) The employee shall be referred for placement in a position on the basis of the employee's indication of geographic location where the employee is willing to be placed and where the pay range is not higher than that of the present position.
- (e) The employee shall be entitled to only one referral for placement in a position which is in accordance with the terms specified as provided for in paragraph (d) above. If the employee should fail to accept the offer of employment in the position, the employee's services shall be terminated on the abolishment date of the position or the date of displacement, and the employee's name shall be placed on the reemployment list. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13)

§11-14 Placement within the employing agency.

- (a) The appointing authority shall exhaust all possibilities in placing the employee in another position in the employee's department before a citywide layoff action will be effectuated. When there is no appropriate vacant position in which the employee may be placed, the appointing authority shall follow the order provided below in accordance with the employee's indication of availability, in determining which employee within the department the employee shall displace:
 - (1) Non-regular employee who occupies a position in the same class. Where there is more than one non-regular employee; layoff will be first, of an employee serving a short term appointment; second, provisional appointment; third, a limited-term appointment; and fourth, a probationary appointment.
 - (2) Non-regular employee who occupies a position in a related class within the same pay range.
 - (3) Regular employee who occupies a position in the same class and has fewer retention points.
 - (4) Regular employee who occupies a position in a related class within the same pay range and has fewer retention points.
 - (5) Non-regular employee who occupies a position in a class of a lower pay range in the same series.
 - (6) Non-regular employee who occupies a position in a class at a lower pay range in a related series.
 - (7) Regular employee who occupies a position in a class assigned to a lower pay range in the same series and has fewer retention points.
 - (8) Regular employee who occupies a position in a class assigned to a lower pay range in a related series and has fewer retention points.
- (b) In the event that the employee cannot be placed in the department, the appointing authority shall notify the employee and the director in writing of this and the impending layoff at least sixty calendar days prior to the layoff. The appointing authority shall also notify the director in writing that a citywide layoff needs to be effectuated if the employee has at least twenty-four retention points and is a regular civil service employee. The director shall notify the appointing authorities whose departments are affected, listing the reasons and the employees who are to be displaced or laid off. [Eff Jul 01 2002] (Auth: HRS §76-17)(Imp: HRS §§76-12, 76-13)

§11-15 Citywide layoff action.

- (a) A citywide layoff action will be effectuated only for an employee who has not been referred for placement or cannot be placed in an appropriate position within the employing agency, and if the employee has regular city civil service status with at least twenty-four retention points. A regular employee with less than twenty-four retention points will have retention rights only within the department employed. The employee affected by layoff shall be referred for placement in another position where the employee is willing to be placed and at the minimum rate of pay that the employee will accept, which rate shall be not higher than that the employee is presently receiving. In a citywide layoff action, the following order shall be followed in the placement of an employee:
- (1) Non-regular employee who occupies a position in the same class. In case there is more than one non-regular employee, layoff will be first of an employee serving a short term appointment; second, a provisional appointment; third, a limited-term appointment; and fourth, a probationary appointment.
 - (2) Non-regular employee who occupies a position in a related class within the same pay range.
 - (3) Regular employee who occupies a position in the same class and has fewer retention points.
 - (4) Regular employee who occupies a position in a related class within the same pay range and has fewer retention points.
 - (5) Non-regular employee who occupies a position in a class of a lower pay range in the same series.
 - (6) Non-regular employee who occupies a position in a class at a lower pay range in a related series.
 - (7) Regular employee who occupies a position in a class assigned to a lower pay range in the same series and has fewer retention points.
 - (8) Regular employee who occupies a position in a class assigned to a lower pay range in a related series and has fewer retention points.
- (b) When the employee cannot be placed in another position, the employee's services will be terminated, and the employee's name will be placed on the recall list. [Eff Jan 20 2012] (Auth: HRS §76-17)(Imp: HRS §§76-12, 76-13)

§11-16 General provisions governing layoffs.

When an employee who is to be laid off accepts a temporary position, the employee may complete the remaining period of temporary employment and upon the termination of employment the employee shall receive no further consideration under the rules governing layoffs; provided that regular employees shall have the right to have the employee's name placed on the recall list. [Eff Jan 20 2012] (Auth: HRS §76-17)(Imp: HRS §§76-12, 76-13)

§11-17 Waiver of time limits for notices.

The time limit for notices contained herein shall not apply to those situations, such as the elimination of a federally funded position or where the employer has insufficient knowledge of the layoff to meet the time requirement. [Eff Jul 01 2002] (Auth: HRS §76-17)(Imp: HRS §§76-12, 76-13)

SUBCHAPTER 3

TERMINATION

§11-18 Applicability.

This subchapter shall apply to exempt and civil service employees unless otherwise specified. [Eff Jan 20 2012] (Auth: HRS §76-17, 76-30) (Imp: HRS §76-13, 76-30; RCH §4-105)

11-19 Termination of employment.

- (a) An appointing authority may proceed to terminate the services of an employee for any of, but not limited to, the following reasons:
- (1) Failure of a non-regular employee to qualify for probationary or permanent appointment to continue the employee's employment.
 - (2) Failure to meet minimum performance requirements or standards.
 - (3) Placement cannot be made for an employee affected by a layoff.
 - (4) Failure to report to work for fifteen days without notifying the appropriate authority of the employee's employment intentions; or
 - (5) Employee submits a resignation prior to, during or after completion of an investigation; or
 - (6) Failure to return to work within fifteen calendar days following the expiration of an approved leave of absence.
- (b) A regular employee who may be subject to termination from the service shall be given a pre-determination hearing in accordance with section 12-3 and:
- (1) An opportunity to respond in writing or in person to the appointing authority or designee as to why the employee should not be terminated.
 - (2) A notice of the proposed action in writing including the reasons for the proposed action, facts supporting the reasons, and the instructions for response.
- (c) When a regular employee is to be terminated, the employee shall be given written notice ten calendar days prior to the termination. If the appointing authority believes that the retention of the employee at the work site would be detrimental to the City, other employees, or the general public during the ten day notice period, the employee may be placed on leave without pay for this ten day notice period. The notice shall contain the following:
- (1) The specific reasons for the termination;
 - (2) Findings of the pre-determination hearing where applicable; and
 - (3) The date of the termination.
- (d) When a non-regular employee is terminated under subsection (a) above, the employee shall be informed of the reason for the action in writing on or before the effective date. [Eff Jan 20 2012] (Auth: HRS §76-17, 76-30) (Imp: HRS §§76-13, 76-30, 386-142; RCH §4-105)

DEPARTMENT OF HUMAN RESOURCES

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 12

DISCIPLINE, PRE-DETERMINATION HEARING,
DISCHARGE, AND DEMOTION

- §12-1 Basis for discipline
- §12-2 Discipline
- §12-3 Pre-determination hearing
- §12-4 Discharge
- §12-5 Demotion
- §12-6 Authority of the civil service commission to hear appeals from disciplinary actions
- §12-7 Notices to the director

Historical Note: Chapter 12 of Part 2 is based substantially on chapter 15 of part 1 of the rules of the civil service commission. [Eff Jul 01 2002]

§12-1 Basis for discipline

- (a) An appointing authority may discipline an employee for cause, for any of, but not limited to, the following reasons:
- (1) Conviction of a criminal offense which is directly related to the employee's position.
 - (2) Violation of any of the laws or rules and regulations governing employment of public employees.
 - (3) Violation of a lawful official regulation or order, or failure to obey a lawful direction by the employee's superior.
 - (4) The employee is not fit for duty due to the effects of drugs, narcotics or intoxicating beverages.
 - (5) The employee is determined to be an illegal user of drugs or narcotics or is determined to be promoting illegal drugs or narcotics.
 - (6) Inappropriate, unprofessional or abusive conduct toward a superior, co-worker or the public.
 - (7) Insubordination or carelessness in the performance of duties or carelessness or negligence in the care or use of City property.
 - (8) Harassing or threatening behavior toward a superior, co-worker or the public.
 - (9) Absenteeism, tardiness or unauthorized absence from the workplace.
 - (10) Falsification of records or testimony by the employee.
- [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-45, 76-46; RCH §4-105) (Imp: HRS §§76-12, 76-13, 76-45, 76-46; RCH §4-105)

§12-2 Discipline.

- (a) Any disciplinary action taken under this chapter shall be imposed within a reasonable period of time after the incident giving rise to the disciplinary action.
- (b) Whenever an employee is orally reprimanded, it shall be done in private.

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- (c) When an employee is to receive a letter of reprimand, the reprimand shall set forth the specific reasons for its issuance.
- (d) When an employee is disciplined with a suspension, the employee shall be given written notice of the suspension on or before the effective date of the action. The notice shall contain the following:
 - (1) Effective day or days of the suspension; and
 - (2) The specific reasons for the suspension.
- (e) In the event the need to impose discipline other than a reprimand is immediate, the employee shall be given the reasons in writing within forty-eight hours after the disciplinary action is taken.
- (f) When an appointing authority is unable to serve a letter of reprimand or the required written notice for suspension at the employee's place of work, the letter or the notice shall be sent by certified mail to the employee's last known address within a reasonable period of time.
- (g) When a non-regular employee is disciplined, the employee shall be informed of the reasons for the action in writing on or before the effective date. In the event the need to discipline is immediate, the employee shall be given the reasons in writing within forty-eight hours after the action. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-45, 76-46; RCH §4-105)(Imp: HRS §§76-12, 76-13, 76-45, 76-46; RCH §4-105)

§12-3 Pre-determination hearing.

- (a) A regular employee who may be subject to discharge from the service or who is to be placed on leave of absence without pay pending investigation under section 8-10 shall be given an opportunity to respond in writing or in person to the appointing authority or designee as to why the employee should not be discharged or be placed on leave without pay pending investigation.
- (b) Notice of the proposed action must be given the employee in writing including the reasons for the proposed action, facts supporting the reasons, and the instructions for responding. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-45, 76-46; RCH §4-105)(Imp: HRS §§76-12, 76-13, 76-45, 76-46; RCH §4-105)

§12-4 Discharge.

- (a) When an employee is to be discharged, the employee shall be given a written notice at least ten calendar days in advance of the effective date of the discharge. The notice shall contain the following:
 - (1) The specific reasons for the discharge;
 - (2) Findings of the pre-determination hearing where applicable; and
 - (3) The date of the discharge.
- (b) If the appointing authority believes that the retention of the employee at the work site would be detrimental to the City, other employees, or the general public during the ten day notice period, the employee may be placed on leave without pay for this ten day notice period prior to the discharge.
- (c) When a non-regular employee is discharged, the employee shall be informed of the reasons for the action in writing on or before the effective date. In the event the need to discharge is immediate, the employee shall be given the reasons in writing within forty-eight hours after the action. [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-45; RCH §4-105)(Imp: HRS §§76-12, 76-13, 76-46; RCH §4-105)

§12-5 Demotion.

- (a) An appointing authority may demote an employee, or may request the reallocation of an employee's position downward for any of, but not limited to, the following reasons:
- (1) The employee's inability to perform the duties of the employee's position due to an injury or illness.
 - (2) The employee's inability to perform the duties and responsibilities of the employee's position (other than for an injury or illness) or due to the employee's failure to meet qualification requirements for the position.
 - (3) To avoid a layoff.
 - (4) To fit the employee into a new structure provided for in a reorganization.
 - (5) The employee submits a request for a voluntary demotion.
 - (6) Due to misconduct by the employee.
- (b) Except for any downward movement requested by an employee, no demotion or downward reallocation shall become effective until the employee receives written notice of the action at least ten calendar days in advance. The written notice shall contain the specific reasons for the action and the effective date.
- (c) The appointment status of an employee whose position is reallocated downward or who is demoted to a position in another class in a lower pay range shall be determined by the director. The director may require a written examination or other evidence for the purpose of determining the employee's qualifications for the position or class of work to which the employee is demoted or to which the employee's position is reallocated downward. The employee shall be required to meet the minimum qualifications of the lower class.
 [Eff Jul 01 2002] (Auth: HRS §§76-17,76-46; RCH §4-105) (Imp: HRS §§76-12, 76-13, 76-46; RCH §4-105)

§12-6 Authority of the civil service commission to hear appeals from disciplinary actions.

- (a) Any action taken by an appointing authority within this chapter may be appealed in accordance with the procedures in chapter 10 of these rules.
- (b) Any action taken by an appointing authority within this chapter which results in the separation from the service or position of a probationary employee shall be reviewed only on the basis of whether the action taken was arbitrary, capricious or discriminatory in nature.
 [Eff Jul 01 2002] (Auth: HRS §§76-17, 76-45, 76-46;)(Imp: HRS §§76-12, 76-13, 76-45, 76-46, 76-47; RCH §4-105)

§12-7 Notices to the director.

A copy of any notice to an employee required under this chapter shall also be sent to the director. [Eff Jul 01 2002] (Auth: HRS §76-17) (Imp: HRS §§76-12, 76-13; RCH §4-105)

DEPARTMENT OF HUMAN RESOURCES

PART 2 RULES OF THE DIRECTOR OF HUMAN RESOURCES

CHAPTER 13

HOURS OF WORK

§13-1 General provisions

§13-2 Mutual agreements

Historical Note: Chapter 13 of Part 2 is based substantially on chapter 17 of part 2 of the rules of the director of civil service. [Eff Jul 01 2002]

§13-1 General provisions.

- (a) An employee's workweek may be in accordance with office hours as determined by the mayor and provided for by section 78-1.6, HRS, with designated shifts or modified work hour programs established by the director and implemented by individual departments.
- (b) Reasonable rest periods, not to exceed in total twenty minutes per workday, may be provided if such breaks will not impair departmental operations.
- (c) Full-time employees shall be allowed a meal period during the workday of at least forty-five minutes, subject to modification by mutual agreement.
- (d) The schedule of a normal workweek for shift workers shall be prepared and prominently posted at least two weeks in advance so that the employees affected will be informed. The schedules shall be for no less than two-week periods and shall not be changed except for cause and provided affected employees are given at least forty-eight hours prior notice. Whenever possible, work schedules shall permit an employee to enjoy a holiday on the day it is observed.
- (e) A part-time employee who works, in accordance with the employee's work schedule, on certain days or at certain times of the day may have the number of workdays or the number of hours of work in a day increased. An employee shall be compensated at the employee's normal pay rate and shall be entitled to overtime when they work more than eight hours a day or more than forty straight time hours in a workweek in accordance with overtime provisions in the applicable collective bargaining agreement or executive order. [Eff Jul 01 2002] (Auth: HRS §§8-1, 8-2, 76-17, 78.1.6; RCH §4-105)(Imp: HRS §§8-1, 8-2, 78-1.6)

§13-2 Mutual agreements

- (a) The appointing authority and an employee or employees may enter into a mutual agreement to modify hours of work as follows:
 - (1) For employees who are participating on a voluntary basis in a modified work hour program, an agreement may be entered into with the appointing authority to permit waiver of the premium or differential pay which would otherwise accrue to the resultant work schedule.
 - (2) Subject to operational requirements, employees may enter into an agreement with the appointing authority to modify the duration of meal periods.
- (b) Mutual agreements shall be submitted to the director for prior review and approval, except where they are in compliance with an established policy for a specific modified work hour program. [Eff Jul 01 2002] (Auth: HRS §76-17; RCH §4-105) (Imp: HRS §§76-12, 76-13)