



INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973, AS AMENDED, RELATING TO PERSONAL SERVICES CONTRACTS.

WHEREAS, much of the work of the City has, in recent years, been performed by persons employed under personal services contracts with the City; and

WHEREAS, persons providing services to the City's executive branch pursuant to personal services contracts are exempt from the civil service pursuant subsections (f), (g), (h) and (j) of Section 6-1103, Revised Charter of Honolulu 1973, as amended ("RCH"); and

WHEREAS, persons providing services to the City's legislative branch pursuant to personal services contracts are exempt from the civil service pursuant subsection (f) of Section 6-1104, RCH; and

WHEREAS, the extensive use of personal services contracts by the City may have incurred certain risks of abuse in such use, such as:

- (1) Circumventing normal civil service procedures that help to ensure that city employment is based on merit principles;
- (2) Evading salary restrictions normally applicable to comparable positions; and
- (3) Obfuscating the true size of the City's workforce and the personnel costs for providing City services.

WHEREAS, although the Civil Service Commission of the City and County of Honolulu may have authority to regulate the terms of employment for the City's employees, it is unclear whether and to what extent it may have authority to regulate the terms of personal services contracts; and

WHEREAS, unlike the Civil Service Commission, the City Council has the responsibility to balance and monitor execution of the City's budget ordinances, has oversight responsibility over the City's executive branch agencies, and has direct responsibility for the employees of the City's legislative branch agencies; and



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WHEREAS, it is therefore appropriate for the Council to have the authority to enact general ordinances establishing limitations on the use of personal services contracts; and

WHEREAS, although the Council believes that it currently has the authority to regulate the City's personal services contracts, it desires to make such authority incontrovertible; and

WHEREAS, the Council recognizes that certain personal services contracts are subject to the Chapter 103D, Hawaii Revised Statutes (the Hawaii Public Procurement Code), and that the Council would have limited authority regarding the letting of such contracts; and

WHEREAS, neither the adoption of this resolution nor the amendments to the Revised Charter contained in this resolution shall be construed as recognition of any limitations on the current authority of the Council to enact legislation and adopt rules establishing policies regarding city officers or employees exempt from the civil service, including but not limited to persons providing the city with contractual services pursuant to personal services contracts; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu:

1. That the following question be placed on the ballot at the 2012 general election:

"Shall the Revised City Charter be amended to recognize the City Council's authority to establish general policies regarding the City's personal services contracts and the persons with whom the City may enter into such contracts?"

2. That Section 6-1103, Revised Charter of the City and County of Honolulu 1973, as amended, is amended to read as follows:

**"Section 6-1103. Civil Service and Executive Branch Exemptions --**

1. The provisions of this chapter of the charter shall apply to all positions in the service of the executive branch. This section shall apply to semi-autonomous agencies as though they are departments of the executive branch.
2. The following positions shall be exempt from the provisions of this chapter of the charter:



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- (a) Positions of officers elected by public vote; positions of heads of departments; the position of the band director of the Royal Hawaiian Band; the position of the executive for housing; the position of the manager and chief engineer of the board of water supply and the manager of any semi-autonomous agency created by ordinance.
- (b) Positions in the office of the mayor, but such positions shall be included in the position classification plan. Employees of the civil defense agency and Royal Hawaiian Band, other than the band director, shall not be exempted from civil service.
- (c) Positions of deputies of the corporation counsel, deputies and administrative or executive assistants of the prosecuting attorney and law clerks.
- (d) Positions of members of any board, commission or equivalent body.
- (e) Positions of a temporary nature filled by students.
- (f) Personal services obtained by contract where the director has certified that the service is special or unique, is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform such service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year.
- (g) Personal services of a temporary nature needed in the public interest where the need for the same does not exceed one year, but before any person may be employed to render such temporary service, the director of human resources shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable.
- (h) Personal services performed on a fee, contract or piecework basis by persons who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time



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devoted to the service of the city and when such fact is certified to by the director of human resources.

- (i) Positions of one first deputy; and for the Honolulu Police Department one additional deputy; private secretaries to heads of departments and their deputies and to the executive for housing; and the position of managing director, one first deputy and private secretaries to each; but private secretarial positions shall be included in the position classification plan. The first deputy in the department of human resources, however, shall not be exempt from civil service.
- (j) Positions or personal services in demonstration programs and joint participation and special projects which serve the community; provided that such exemptions are required by federal law or rules and regulations and then in accordance with procedures established by ordinance.
- (k) The following positions of the public transit authority:
  - (1) The executive director, deputy director(s), private secretary to the executive director and deputy director(s); and
  - (2) Positions certified by the director of human resources that require specialized knowledge and experience in fixed guideway system planning, development, operations, maintenance, and management, or transit-oriented development;

provided that, except for private secretarial positions, such positions shall not be included in the position classification plan and salaries for such positions shall be set by the public transit authority.

- (l) Positions in the liquor commission of the liquor administrator and the deputy liquor administrator, but such positions shall be included in the position classification plan.

3. [The] Except when contrary to an ordinance enacted pursuant to subsection 4, the director of human resources shall determine the applicability of



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this section of the charter to specific employment or services in the executive branch.

4. The council may, by ordinance, establish policies regarding those personal services contracts referred to in subdivisions (f), (g), (h) and (i) of subsection 3 and regarding the persons contracted to provide services to the city pursuant to those subdivisions. Such an ordinance may reduce, but may not increase the maximum contract periods established in subdivisions (f) and (g)."

3. That Section 6-1104, Revised Charter of the City and County of Honolulu 1973, as amended, is amended to read as follows:

**"Section 6-1104. Civil Service and Legislative Branch Exemptions --**

1. The provisions of this chapter of the charter shall apply to all positions in the service of the legislative branch and shall embrace all personal services performed for the legislative branch, except the following:
- (a) Positions of officers elected by public vote or appointed to office as provided in subsection 3-105(a) of this charter.
  - (b) The position of city clerk.
  - (c) Positions in the office of council services.
  - (d) Positions of the first deputy and the private secretaries to the city clerk and the first deputy, but private secretarial positions shall be included in the position classification plan.
  - (e) Positions of temporary election clerks employed during election periods, but such positions shall be included in the position classification plan.
  - (f) Positions and services described by subsections (e), (f), (g) and (h) of Section 6-1103 of this charter, provided, however, that no certification by the director of human resources or approval by the civil service commission shall be required.
  - (g) Positions in the office of the city auditor, including positions on the audit committee which may be established by the council.



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2. The council may, by ordinance or rule, establish policies regarding those personal services contracts referred to in subdivisions (f) of subsection 1 and regarding the persons contracted to provide services to the city pursuant to that subdivision. The Council may reduce the maximum contract periods incorporated within subdivision (f) by ordinance or rule, but may increase them only by ordinance.”
4. That charter material to be repealed is bracketed and new charter material is underscored. When revising, compiling, or printing these charter provisions for inclusion in the Revised Charter of the City and County of Honolulu 1973, as amended, the revisor of the Charter need not include the brackets, the bracketed material, or the underscoring.
5. That if these Charter provisions are amended by any other Charter amendment(s) approved by the electors in the 2012 general election, the revisor of the Charter, in revising, compiling or printing the Charter: (1) may designate or redesignate articles, chapters, sections or parts of sections, and rearrange references thereto; and (2) shall, except as otherwise expressly provided in this resolution or in the other resolution(s) amending these Charter provisions, give effect, to the extent possible, to all of the amendments approved. The revisor of the Charter may also change capitalization or the forms of numbers and monetary sums for the sake of uniformity.
6. That the City Clerk be and is hereby directed:
  - A. To prepare the necessary ballots with the question contained in this Resolution and with spaces for “yes” and “no” votes on the question for presentation to the electors at the 2012 general election. The City Clerk may make technical and non-substantive changes to the form of the question presented in order to conform it to the form of other charter amendment questions presented to the electors at the same election; and
  - B. To publish the above-proposed charter amendments at length in a daily newspaper of general circulation in the City and County of Honolulu at least 45 days prior to its submission to the electors at the 2012 general election.



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- 7. That upon approval of the charter amendment questions posed in this Resolution by a majority of the electors voting thereon, as duly certified, the charter amendments proposed herein shall take effect.

INTRODUCED BY:

*[Handwritten signature]*

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DATE OF INTRODUCTION:

**APR 18 2012**

Honolulu, Hawaii

Councilmembers

**FILED**  
**APR 18 2014**  
PURSUANT TO ROH Sec. 1-2.5