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REVISED CHARTER OF THE CITY & COUNTY OF HONOLULU 1973

(2000 Edition)

SUPPLEMENT FOR CHARTER AMENDMENTS 2000 THROUGH 2015

04/08/2016 3c.

Kirk Caldwell
Mayor

NOTE

This 2015 Supplement collects all amendments to the Revised Charter of the City and County of Honolulu 1973 (2000 Edition) during the years 2000-2015. The footnotes herein retain the numbering of the 2012 Supplement. When a new edition of the Charter is published, the revisor of the charter will reorganize the charter footnotes.

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ARTICLE III
LEGISLATIVE BRANCH

CHAPTER 1
COUNCIL

Section 3-103. Reapportionment and Reapportionment Years --

1. The year 1991 and every tenth year thereafter shall be reapportionment years.

2. A council reapportionment commission shall be constituted on or before the first day of July of each reapportionment year and whenever reapportionment is required by court order. The commission shall consist of nine members. The presiding officer of the council shall, with the approval of the council, select the members of the commission, no more than a majority of who shall be from the same political party.[3]

The commission shall elect a chair from among its members. Any vacancy in the commission shall be filled in the same manner as for an original appointment. The commission shall act by majority vote of its membership and shall establish its own procedures. The members of this commission shall not, in any manner, be deemed officers of the city. The commission and its members shall be subject only to the provisions of this section, Section 3-114, and Section 3-502 of the charter. Commission members shall be compensated and reimbursed for their necessary expenses as provided by ordinance. No member of the commission shall be eligible to become a candidate for election to the council in the initial election held under any reapportionment plan adopted by the commission.

The city clerk, under the direction of the commission, shall furnish all necessary technical and secretarial services. The council shall appropriate funds to enable the commission to carry out its duties.

3. In effecting reapportionment, the commission shall be guided by the following criteria:
   (a) No district shall be so drawn as to unduly favor a person or political faction.
   (b) Districts, insofar as practicable, shall be contiguous and compact.[4]
   (c) District lines shall, where possible, follow permanent and easily recognized features, and, when practicable, shall coincide with census tract boundaries.

4. On or before January 2 of the year following appointment, the commission shall file with the city clerk a reapportionment plan, which shall be applicable to the next succeeding election at which councilmembers are elected to regular terms.

5. Any duly registered voter may petition the proper court to compel, by mandamus or otherwise, the appropriate person or persons to perform their duty or to correct any error made in a reapportionment plan, or the court may take such other action to effectuate the purposes of this section as it may deem appropriate. Any such petition must be filed within forty-five days after the filing of a reapportionment plan.

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[3]To be "from the same political party," within the purview of the city and county charter provision governing composition of reapportionment commission, means to be a member of the same political party recognized as such by that party and the member. Coray v. Koga, 56 Haw. 519, 542 P.2d 1272 (1975).

[4]City charter criteria require compact and contiguous council districts, and do not refer to communities. Kawamoto v. Okata, 75 Haw. 463, 868 P.2d 1183 (1994), reconsideration denied, 75 Haw. 580, 871 P.2d 795.

6. In order to commence the staggering of councilmembers' terms in accordance with Section 16-122, the reapportionment plan for 2002 shall retain the council district numbering of I, II, III, IV, V, VI, VII, VIII, and IX. *(Reso. 83-357 and 88-242; 1992 General Election Charter Amendment Question Nos. 1 and 32A(14); 1998 General Election Charter Amendment Question No. 8(II); Reso. 02-39)*

Section 3-104. Qualifications of Councilmembers --

To be eligible for election or appointment to the council, a person must be a duly qualified elector of the council district from which the person seeks to be elected or appointed. Any councilmember who removes his or her residence from the district from which the councilmember was elected or appointed shall, by that fact, be deemed to have vacated the office. *(1992 General Election Charter Amendment Question No. 17; Reso. 04-113)*

Section 3-114. Financial and Performance Audits --

1. Financial Audit. The council shall provide for the city auditor to conduct or cause to be conducted within thirty days after the beginning of each fiscal year an independent financial audit of all operations of the city and all operations for which the city is responsible and of their funds and accounts for the audited fiscal year. The financial audit shall be conducted by a certified public accountant or a firm of certified public accountants. The scope of the audit shall be in accordance with the terms of a written contract to be signed by the presiding officer of the council, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the audited fiscal year. A copy of the audit report shall be transmitted to the mayor and to the council, shall be filed with the city clerk, and shall be a public record.

2. Performance Audit. The council may, at any time by adoption of a resolution, provide for and direct the city auditor to conduct or cause to be conducted a performance audit of any agency or operation of the city. The scope of the audit shall be set forth in the resolution and may include the following objectives:

(a) Examination and testing of processes to determine whether the laws, policies and programs of the city are being carried out in the most effective, efficient and economical manner.

(b) Examination and testing of internal control systems to ensure that such systems are properly designed to safeguard public assets against loss from waste, fraud, or error, to promote efficient operations, and to encourage adherence to prescribed management policies.

(c) Recommendations for changes in the organization, management and processes which will produce greater efficiency and effectiveness in meeting the objectives of the programs or operations carried out.

The audit resolution shall provide for the completion of the audit within one calendar year. A copy of the audit report shall be filed with the city clerk and be a public record.

3. For the purpose of this section, "agency or operation of the city" means the same as defined under Section 3-502. *(Reso. 78-278, 84-197 and 02-39)*

Section 3-121. Creation of Semi-Autonomous Agencies --

1. The city may by ordinance create special proprietary semi-autonomous agencies as may be necessary. Any such agency shall function as a public body, corporate and politic, with the

authority to sue and be sued and may be granted such other powers as may be necessary or convenient for its purposes.

2. Any such agency shall be subject to the civil service provisions and centralized purchasing and disposal of personal property provisions of this charter and shall come within the purview of the performance audit conducted by the managing director and such audits as may be required by the council or conducted by the city auditor.

3. Pensions for officers and employees of any such agency shall be governed by law. *(Reso. 83-357, 84-197, 90-295, 95-205 and 02-39)*

Section 3-124. Temporary Replacement of Councilmember Called to Active Military Duty --

1. A person may be appointed to temporarily replace a councilmember who, as a member of the military reserve or national guard, is called to active duty to serve in the United States armed forces for a period in excess of 180 consecutive days out of the State of Hawaii. An appointment shall be made pursuant to this section.

2. For this section:

(a) A call to active duty that is indefinite or unclear as to period or location of active duty shall not be deemed for a "period in excess of 180 consecutive days out of the State of Hawaii" nor deemed sufficient for the appointment of a temporary replacement councilmember.

(b) "Temporarily replaced councilmember" means the councilmember who is temporarily replaced because of a call to active duty.

(c) "Temporary replacement councilmember" means the councilmember who is appointed to temporarily replace a councilmember called to active duty.

(d) "Written call-up order" means an order in writing from an authorized United States officer that requires a councilmember who is in the military reserve or guard to report for active duty in the United States armed forces.

3. After a councilmember receives a written call-up order for a period in excess of 180 consecutive days out of the State of Hawaii, the councilmember may submit to the council chair a written request for the appointment of a temporary replacement councilmember. The written request shall be accompanied by a copy of the order.

(a) The council may appoint a temporary replacement councilmember for the councilmember who requested the replacement by adoption of a resolution. Such a resolution shall be adopted by the affirmative vote of a majority of the council's entire membership within 60 days of receipt of the written request by the council chair.

(b) If the council does not adopt a resolution appointing a temporary replacement councilmember pursuant to paragraph (a) within the specified 60-day period:

(1) The council shall not have any further opportunity to appoint a temporary replacement councilmember for the councilmember who requested the temporary replacement; and

(2) The mayor may make the appointment of a temporary replacement councilmember by written proclamation at any time after the 60th day. Such a written proclamation shall be immediately submitted to the council.

4. When a temporary replacement councilmember vacates office before the end of the temporary term because of the temporary replacement councilmember's death or disability, a new temporary replacement councilmember may be appointed in accordance with subsection 3;

provided that the 60-day period for council appointment of the new temporary replacement councilmember shall commence when the previous temporary replacement councilmember vacates office. Only once may a new temporary replacement councilmember be appointed in accordance with this paragraph to replace a previous temporary replacement councilmember who vacates office because of death or disability. If the new temporary replacement councilmember vacates office before the end of the temporary term, another new temporary replacement councilmember shall not be appointed.

No person shall be appointed to replace a temporary replacement councilmember who vacates office before the end of the temporary term for reason other than the temporary replacement councilmember's death or disability.

5. A temporary replacement councilmember appointed under subsection 3 or 4 shall have the requisite qualifications of Section 3-104.

6. The term of office of the temporary replacement councilmember shall:

(a) Begin on the date set forth in the resolution or proclamation, but no earlier than the applicable of the following: (1) if the appointment is made under subsection 3(a), the date the temporarily replaced councilmember reports for active duty, (2) if the appointment is made under subsection 3(b), the date of receipt of the written proclamation by the council, or (3) if the appointment is made under subsection 4, the date the previously appointed temporary replacement councilmember vacates office; and

(b) Terminate on the earliest of the following: (1) the date the council receives written notice from the temporarily replaced councilmember that the councilmember's active duty has ended and the councilmember desires to return to office; (2) the date the temporarily replaced councilmember's term of office expires; or (3) the date the temporarily replaced councilmember vacates office.

7. If a temporarily replaced councilmember vacates office before the expiration of the councilmember's term, a successor shall be appointed pursuant to Section 3-105.

8. While in office, a temporary replacement councilmember shall have the compensation, benefits, rights, privileges, powers, duties, and functions of a councilmember.

While out of office, the temporarily replaced councilmember shall not have the compensation, benefits, rights, privileges, powers, duties, or functions of a councilmember, except as otherwise provided under federal or state law.

9. A temporarily replaced councilmember who has had a temporary replacement appointed, but whose active duty out of the State of Hawaii ends on or before the expiration of the 180-day period specified under subsection 1, shall not be subject to any penalty from the council. The fact that the temporarily replaced councilmember's active duty out of the State of Hawaii ends on or before the elapse of the 180-day period shall not retroactively invalidate the past appointment of the temporary replacement councilmember nor void any official act of that temporary replacement councilmember.

10. The council by ordinance may establish other policies and procedures that are consistent with this section to further implement this section. *(Reso. 04-113)*

CHAPTER 4
ORDINANCES BY INITIATIVE POWER

Section 3-402. Procedure for Enactment and Adoption[†] --

1. Petition. An ordinance may be proposed by petition, signed by duly registered voters equal in number to at least ten percent of the total voters registered in the last regular mayoral election for submission to the electors at a general election. A petition that specifies that an initiative special election be called shall be signed by duly registered voters equal in number to at least fifteen percent of the total voters registered in the last mayoral election.

2. Form of Petition. Each voter signing such petition shall add to the signature, the voter's printed name, residence, and the date of signing.

3. Affidavit on Petition. Signatures may be on separate sheets, but each sheet shall have appended to it the affidavit of the person who circulated that sheet of the petition, that, to the best of the affiant's knowledge and belief, the persons whose signatures appear on the sheet are duly registered voters of the city, that they signed with full knowledge of the contents of the petition and that their residences are correctly given.

4. Proposed Ordinance. Such petition shall set forth the proposed ordinance, or a draft of the proposed ordinance may be attached and made a part of such petition. *(Petition No. 17 (1982); Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 15 and 32A(7); 2006 General Election Charter Amendment Question No. 12(f); Reso. 10-64)*

Section 3-403. Filing and Examination of Signatures on Petition[††] --

1. Duty of City Clerk. A petition proposing an ordinance shall be tendered in its entirety for filing with the city clerk with a transmittal letter to the city clerk. Upon filing of such petition with the city clerk, the city clerk shall examine it to determine whether it contains a sufficient number of apparently genuine signatures of duly registered voters. The city clerk may question the genuineness of any signature or signatures appearing on the petition, and if the city clerk finds that any such signature or signatures are not genuine, the city clerk shall, after public disclosure of the signatures in question, disregard them in determining whether the petition contains a sufficient number of signatures.

2. Filing of Petition, When. A petition may be filed with the city clerk at any time except during the period from forty-five days before a city first special election to the day after the certification of the results of the immediately following general election or at the conclusion of any statewide or countywide general election contest, whichever shall last occur. A petition submitted during this period shall be rejected and shall not be accepted for filing by the city clerk.

[†]The charter provision that an ordinance may be proposed by petition signed by duly registered voters equal in number to at least ten percent of the "total voters registered" in the last regular mayoral election, applies as a threshold number whether petitioners submit the petition for proposed ordinance for a general election, a scheduled special election, or an initiative special election. Stop Rail Now v. De Costa, 122 Hawai'i 217, 225 P.3d 659 (Haw. Ct. App. 2009). Superseded in part by subsequent amendment in Reso. 10-64. [Note: When a new edition of the Charter is published, the revisor of the charter shall numerically renumber all of the charter footnotes.]

[††]See footnote [†] above.

3. City Clerk to Certify or Reject Petition, When. The city clerk shall eliminate any sheet of the petition which is not accompanied by the required affidavit of the person who circulated the sheet of the petition or which does not state the same text of the proposed ordinance as the other sheets of the petition. The invalidity of any sheet shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such invalid sheet. The city clerk shall complete the examination of the petition within twenty working days after the date of filing and shall certify the petition or shall reject the petition.

4. Review by the Court. A final determination as to the sufficiency or validity of the petition may be subject to court review. *(Petition No. 17 (1982); Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 32A(7) and 32A(8); Reso. 10-64)*

Section 3-404. Submission of Proposal to Electors[†††] --

1. For General Elections. Any petition for proposed ordinance which has been filed with the city clerk before the forty-fifth day prior to the city first special election that is held in conjunction with the primary election for that year and which has been certified by the city clerk, shall be submitted to electors for the general election of that year.

2. For Initiative Special Elections. A special election for an ordinance by initiative power shall be called by proclamation within ninety days after the city clerk's certification of the petition if signed by duly registered voters equal in number to at least fifteen percent of voters registered in the last regular mayoral election, and if such petition specifies that a special election be called; provided that if the city clerk certifies less than fifteen percent but at least ten percent of voters registered, the proposed ordinance shall be submitted at the next general election. No special initiative election shall be held if at the time of the filing of the petition, the city first special election or the general election is scheduled within one hundred eighty days of the filing of the petition. If a petition calling for an initiative special election is filed within one hundred eighty days of the city first special election or the general election, the petition shall be deemed to be a petition filed under paragraph 1 above, and if the petition fulfills the requirements of said paragraph 1, the proposed ordinance shall be submitted to the voters at the next general election.

3. Adoption by the Council. If the council introduces and adopts after three separate readings, including a public hearing, the proposed ordinance which was the basis for a petition on or before ten days prior to date of publication of the proposed ordinance as required in this charter, then the proposed ordinance need not be submitted to the electors. *(Petition No. 17 (1982); 1992 General Election Charter Amendment Question No. 32A(7); Reso. 10-64)*

Section 3-408. Administrative Rules --

The city clerk may promulgate administrative rules to implement this chapter. The rules may establish requirements for a petition and may establish a method for examination of a petition by statistical random sampling examination and provide procedures for challenge of a sampling examination. *(Reso. 10-64)*

[†††]See footnote [†] on page 5.

CHAPTER 5
CITY AUDITOR

Section 3-501. Office Established; City Auditor --

1. There is established within the legislative branch an office of the city auditor, to be headed by a city auditor who shall be appointed by the city council and shall serve for a period of six years, and thereafter, until a successor is appointed. The council shall fix the salary of the city auditor. The council, by a two-thirds vote of its membership, may remove the auditor from office at any time for cause.

2. The city auditor shall possess adequate professional proficiency for the office, demonstrated by relevant certification, such as certification as a certified internal auditor or certified public accountant, or have an advanced degree in a relevant field with at least five years experience in the field of government auditing, evaluation, or analysis. A certified internal auditor or certified public accountant shall be preferred. The city auditor shall have a bachelor's degree in accounting, business administration, or public administration or related field. If financial statement audits are conducted, the city auditor shall be a certified public accountant.

3. Except for exercising the right to vote, neither the auditor nor any member of the office of the city auditor shall support, advocate, or aid in the election or defeat of any candidate for city public office.

4. The city auditor may appoint the necessary staff for which appropriations have been made by the council. Subject to the provisions of this charter and applicable rules and regulations adopted thereunder, the auditor shall have the same powers with respect to the personnel of the office of the city auditor as executive branch department heads have over their personnel. Staff shall be appointed by the auditor in a manner consistent with the merit principles set forth in Section 6-1102* of this charter, but shall not otherwise be subject to the provisions of Chapter 11 of Article VI of this charter, pursuant to Section 6-1104** of this charter. *(Reso. 02-39)*

Section 3-502. Powers, Duties, and Functions --

1. It shall be the duty of the city auditor to conduct or cause to be conducted:

(a) The annual financial audit of the city, as required by Section 3-114;

(b) Performance audits of the funds, programs, and operations of any agency or operation of the city as requested by the council by resolution, as authorized by Section 3-114;

(c) Performance and financial audits of the funds, programs, and operations of any agency or operation of the city, as determined by the auditor to be warranted. Before the commencement of each fiscal year, a plan of the audits proposed to be conducted by the auditor during the fiscal year shall be transmitted to the council for review and comment, but not approval. The plan also shall be transmitted to the mayor and filed with the city clerk as public record; and

(d) Follow-up audits and monitoring of compliance with audit recommendations by audited entities.

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*Revision note: Citation error, Section 11-302 replaced with Section 6-1102.

**Revision note: Citation error, Section 11-304 replaced with Section 6-1104.

The city auditor shall conduct or cause to be conducted all audits in accordance with government auditing standards.

2. Audit findings and recommendations shall be set forth in written reports of the city auditor, a copy of which shall be transmitted to the mayor and to the council and filed with the city clerk as public record.

3. For the purposes of carrying out any audit, the auditor shall have full, free, and unrestricted access to any city officer or employee and shall be authorized to examine and inspect any record of any agency or operation of the city, to administer oaths and subpoena witnesses and compel the production of records pertinent thereto. If any person subpoenaed as a witness or compelled to produce records shall fail or refuse to respond thereto, the proper court, upon request of the auditor, shall have the power to compel obedience to any process of the auditor and to punish, as a contempt of the court, any refusal to comply therewith without good cause. The auditor may retain special counsel, in the manner authorized by the council, to represent the auditor in implementing these powers.

False swearing by any witness shall constitute perjury and shall be referred by the auditor to the prosecuting attorney for prosecution. In any audit which concerns the alleged gross misconduct or alleged criminal conduct on the part of any individual, such individual shall have the right to be represented by counsel and the right to have the auditor compel the attendance of witnesses on behalf of the individual.

4. The city auditor's performance shall be evaluated annually by the council.

The city auditor's audit activities shall be subject to quality review in accordance with applicable government auditing standards by a professional, non-partisan, objective group. The written report of the independent review shall be transmitted to the council and mayor and filed with the city clerk as public record.

5. For the purpose of this section and Section 3-114: "Agency or operation of the city" includes any executive agency, semi-autonomous agency, council office, and other establishment of city government supported, in whole or in part, by city or public funds.

"Council office" includes the council itself, the office of a councilmember and the councilmember's immediate staff, the office of the city clerk, the office of council services, a reapportionment commission, and a charter commission. This definition applies only to those sections. It shall not be construed as excluding the office of the city auditor from the legislative branch.

"Record" includes any account, book, paper, and document, and any financial affair, notwithstanding whether any of the preceding is stored on paper or electronically. *(Reso. 02-39)*

Section 3-503.* Audit Committee --

1. The council may establish an audit committee, the members of which shall individually advise the city auditor on the following: formulation of the plan of audits proposed to be conducted by the auditor pursuant to Section 3-502.1(c); conduct of audits; follow up of audits; selection of private contractors to perform audits for the city auditor; evaluation of preliminary audit findings and recommendations and city agency, officer, or employee responses to the preliminary findings and recommendations; and evaluation of the city auditor's performance during each fiscal year. If established, the audit committee shall consist of five members:

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*Revision note: Section revised to conform with the numbering format used in the Charter.

(a) One member shall be the chair of the council committee with jurisdiction over the executive budget ordinances; and

(b) The other members shall be appointed by the council. The council shall appoint members who are qualified by experience, expertise, and independence to perform the duties of the audit committee. A member appointed by the council shall not hold any other office or position with the city while on the audit committee. The method of appointment, terms, and specific qualifications of the appointed members shall be established by the council by ordinance or rule. The council also may establish by ordinance or rule provisions for the removal of an appointed member for cause.

The audit committee shall be within the office of the city auditor.

2. Members of the audit committee shall have the power to render advice to the city auditor only on an individual basis. The members may gather and render the advice at meetings closed to the public.

The audit committee shall not have the power to take official actions or make collective decisions based on voting by the members. A quorum shall not be required for the audit committee to meet.

The audit committee is intended to have the duty of advising the city auditor on preliminary audit findings and recommendations and other confidential matters which should not be disclosed prematurely at meetings open to the public. Thus, this subsection is intended to permit the audit committee to gather in closed meetings without violating the state law on open meetings for public agencies.

If, however, a court of competent jurisdiction rules that the audit committee is subject to the state law on open meetings, the audit committee shall comply with the state law. Or, the audit committee may suspend its operation until appropriate amendment is made to the state law to permit the committee to gather in closed meetings.

3. The chair of the audit committee shall be appointed by the council in the manner provided by ordinance or rule.

A meeting of the audit committee may be called by the chair or auditor.

4. Members appointed by the council shall not be entitled to compensation for serving on the committee. The member from the council shall not be entitled to compensation for serving on the committee that is additional to the compensation received as a councilmember. All members, however, shall be entitled to be reimbursed for travel and other necessary expenses incurred by them in the performance of their official duties.

5. Section 13-103 shall not apply to the members of the audit committee. *(Reso. 02-39)*

ARTICLE IV
EXECUTIVE BRANCH - GENERAL PROVISIONS

CHAPTER 1
GENERAL ORGANIZATION

Section 4-104. Appointment, Confirmation and Removal of Officers and Employees --

1. All department and executive agency heads and the managing director, as provided in Sections 5-201, 6-101, 6-105, 6-201, 6-301, 6-401, 6-501, 6-601, 6-701, 6-801, 6-901, 6-1101, 6-1201, 6-1301, 6-1401, 6-1501, and 6-1701, shall be nominated and, by and with the advice and

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consent of the council, appointed and may be removed by the mayor, except as otherwise provided by this charter. Department heads shall be duly registered voters of the city and qualifications of department heads shall be as required by this charter.

2. When the position of head of an executive agency becomes vacant and the mayor is the appointing authority, the mayor may temporarily fill the vacancy by granting a commission allowing the nominee to fulfill the responsibilities of the position. The commission shall begin when the mayor submits to the council a request for confirmation. The commission shall expire when the council makes the confirmation decision. If the nominee fails to be confirmed by the council, the nominee shall not be eligible for another interim appointment to the same office.

3. Department heads may appoint the necessary staff for which appropriations have been made by the council.

4. No appointing authority shall appoint any person to any office or position exempted from civil service until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of the person's office or position.

(Reso. 83-357 and 89-389; 1992 General Election Charter Amendment Question Nos. 11 and 32A(1); Reso. 94-267 and 95-80; 1998 General Election Charter Amendment Question Nos. 1(I) and 2(II); 2006 General Election Charter Amendment Question No. 12(b) and (e); Reso. 10-38; Reso 11-47)

ARTICLE VI
EXECUTIVE BRANCH - MANAGING DIRECTOR AND AGENCIES DIRECTLY UNDER THE MANAGING DIRECTOR

CHAPTER 1
MANAGING DIRECTOR

Section 6-103. Department of Emergency Management --

There shall be a department of emergency management headed by a director of emergency management who shall be appointed and may be removed by the mayor in accordance with law.[16] The director of emergency management shall:

(a) Develop, prepare and, under disaster or emergency situations, assist in the implementation of civil defense plans and programs to protect and promote the public health, safety and welfare of the people of the city.

(b) Coordinate the civil defense and emergency preparedness activities and functions of the city with those of the state and federal governments and other public or private organizations for civil defense within the state.

(1998 General Election Charter Amendment Question No. 3(III), section and subsequent sections renumbered; 2007 Reorganization)

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[16]The position of civil defense administrator is a civil service position. Malcolm A. Sussel v. City and County of Honolulu, et al., U.S.D.C. Civil Nos. 86-1136 and 88-00375, judgments entered May 4 and May 8, 1989, affirmed by U.S.C.A. (9th Circuit) May 9, 1991; Sussel v. City and County of Honolulu Civil Service Commission, 71 Haw. 101, 784 P.2d 867 (1989); Sussel v. Civil Service Commission of the City and County of Honolulu, 74 Haw. 599, 851 P.2d 311 (1993).

Section 6-106. Office of Housing --

There shall be an office of housing headed by an executive for housing who shall be appointed and may be removed by the mayor. The executive for housing shall have had a minimum of three years experience in the administration of affordable housing programs or projects or programs for low-income, homeless or special needs populations. The executive for housing shall:

(a) Oversee, coordinate and direct the development, preparation and implementation of plans and programs relating to affordable housing, senior housing, special needs housing, and homelessness, for the benefit of the people of the city.

(b) Oversee, coordinate and direct the activities and functions of the city relating to affordable housing, senior housing, homelessness, and special needs housing.

(c) Coordinate city activities and programs relating to affordable housing, senior housing, homelessness, and special needs housing with those of the state and federal governments and those of public or private housing organizations within the state. *(Reso. 11-47)*

CHAPTER 2
DEPARTMENT OF BUDGET AND FISCAL SERVICES

Section 6-203. Powers, Duties and Functions --

The director of budget and fiscal services shall be the chief accounting officer of the city and shall:

(a) Prepare bills for the collection of moneys due the city or authorize the preparation thereof by other executive agencies of the city government under the director's general supervision.

(b) Collect and receive moneys due to or receivable by the city and issue receipts therefor or authorize other executive agencies to do so under conditions prescribed by the director of budget and fiscal services.

(c) Keep accurate and complete account of receipts and disbursements.

(d) Maintain the treasury and, with the approval of the mayor, deposit moneys belonging to the city in depositories authorized by law which fulfill all conditions prescribed for them by law.

(e) Contract for services of independent contractors, purchase materials, supplies and equipment and permit disbursements to be made only pursuant to rules and regulations adopted under the terms of this charter.

(f) Have the responsibility for issuing, selling, paying interest on and redeeming bonds of the city.

(g) Prepare and issue warrants.

(h) Prepare payrolls and pension rolls.

(i) Be responsible for the management of city funds.

(j) Sell real property upon which improvement assessments are not paid within the period prescribed pursuant to policies established by the council, and dispose of personal property not needed by any agency of the city.

(k) Rent or lease city property, except property controlled by the board of water supply and the public transit authority, and award concessions, pursuant to law and to policies established by the council.[17]

(l) Prepare and maintain a perpetual inventory of all lands owned, leased, rented or controlled by the city.

(m) Prepare and maintain a perpetual inventory of equipment owned or controlled by the city and materials and supplies.

(n) Review assessment rolls for assessable public improvements prior to approval by the council and issue bills therefor after such approval has been given.

(o) Have custody of all official bonds, except the bond of the budget and fiscal services director, which shall be in the custody of the mayor.

(p) Review the manner in which public funds are received and expended and report to the mayor on the integrity with which said funds are accounted for and on the financial responsibility of officers and employees administering said funds.

(q) Provide information pertaining to the financial affairs of the city and make financial reports at least quarterly to the mayor and the council.

(r) Prepare the operating and capital program and budget and necessary budget ordinances and amendments or supplements thereto under the direction of the mayor.

(s) Review the operating and capital budget program schedules of each executive agency and make budgetary allotments for their accomplishment with the approval of the mayor.

(t) Review all executive agency requests for the creation of new positions.

(Reso. 83-357, 90-295 and 95-205; 1998 General Election Charter Amendment Question No. 2 (V); Reso. 09-252 and 10-110)

Section 6-207. Liquor Commission --

The organization and the duties and functions of the liquor commission of the City and County of Honolulu shall be as provided by law, except that the commission shall be attached to the department of budget and fiscal services. The positions of liquor administrator and deputy liquor administrator shall be exempt from civil service in accordance with Section 6-1103.

The liquor commission shall appoint and may remove a liquor administrator, who shall serve as the administrative head of the commission staff and shall be subject to the policies and directions of the commission.

The liquor administrator may appoint and may remove a deputy liquor administrator who shall serve as the first deputy to the administrator.

The liquor administrator may hire and may remove other staff in accordance with applicable law. The salaries of the staff shall be set in accordance with applicable law. *(Reso. 83-357; 1998 General Election Charter Amendment Question No. 2(V); Reso. 09-357)*

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[17]The word "policy," as used in the charter to describe council powers means a determination much broader than an ad hoc command to take specific action with regard to a particular piece of property, and has reference to requirements set up by the council to serve and protect the public interest which are generally applicable to the leasing or renting of any city and county property, or the awarding of concessions thereon. City Council of the City and County of Honolulu v. Fasi, 52 Haw. 3, 467 P.2d 576 (1970).

CHAPTER 3
DEPARTMENT OF COMMUNITY SERVICES

Section 6-302. Powers, Duties and Functions --

The director of community services shall:

(a) Develop and administer projects, programs and plans of action for human resources, human services and housing programs.

(b) Develop and administer projects, programs and plans of action designed to achieve sound community development, provided that such projects, programs and plans of action conform to and implement the general plan and development plans.

(c) Administer grants awarded from the grants in aid fund.

(d) Act as the local public officer for the purpose of implementing federally-aided and state-aided human resources, human services, housing, urban renewal and community development programs.

(Reso. 89-537 and 95-139; 1998 Reorganization; Reso. 10-38; Reso 11-47; Reso. 12-44)

CHAPTER 6
DEPARTMENT OF EMERGENCY SERVICES

Section 6-603. Powers, Duties and Functions --

The director of emergency services shall:

(a) As to medical services:

(1) Be the primary provider of emergency medical care;

(2) Develop programs and provide training and educational programs related to emergency medical services and injury prevention;

(3) Be responsible for medical matters relating to public health and welfare.

(4) Be responsible for the administration of the city's health services programs and medical evaluations of current and prospective city employees.

(b) As to ocean safety:

(1) Be the primary responder to emergencies arising on the beach and in the near shore waters;

(2) Be responsible for ocean safety training, educational, and risk reduction programs relating to ocean safety.

(c) Perform such duties as may be required by law.

(1992 General Election Charter Amendment Question No. 16; 1998 Reorganization; 2006 General Election Charter Amendment Question No. 10; Reorganization 2007; Reorganization 2012)

CHAPTER 8
DEPARTMENT OF ENVIRONMENTAL SERVICES

Section 6-803. Powers, Duties and Functions --

The director of the department of environmental services shall:

(a) Advise the director of design and construction concerning the planning and design of wastewater facilities.

(b) Oversee the operation and maintenance of sewer lines, treatment plants and pumping stations.

(c) Monitor the collection, treatment and disposal of wastewater.

(d) Provide chemical treatment and pumping of defective cesspools.

(e) Develop and administer solid waste collection, processing and disposal systems including a comprehensive curbside recycling system.

(f) Promulgate rules and regulations as necessary to administer and enforce requirements established by law.

(g) Perform such other duties as may be required by law.

(1992 General Election Charter Amendment Question No. 6; 1998 Reorganization; 2006 General Election Charter Amendment Question No. 4)

CHAPTER 9
DEPARTMENT OF FACILITY MAINTENANCE

Section 6-903. Powers, Duties and Functions --

The chief engineer shall:

(a) Maintain public buildings and their adjoining parking facilities, except as otherwise provided by law.

(b) Maintain public streets, roads, bridges, traffic medians, triangles, circles, other traffic calming appurtenances and walkways, and drainage and flood control systems.

(c) Install and maintain street lighting systems.

(d) Maintain, oversee and monitor drainage and flood control systems, administer city storm water permits, programs and management plans, and enforce city ordinances and rules relating to storm water quality.

(e) Perform such other duties as may be required by law.

(1992 General Election Charter Amendment Question No. 6; 1998 Reorganization; 2007 Reorganization; Reso. 15-10, CD1)

CHAPTER 10
FIRE DEPARTMENT

Section 6-1004. Powers, Duties and Functions --

The fire chief shall:

(a) Perform fire fighting and rescue work in order to save lives, property and the environment from fires.

(b) Respond to emergencies arising on hazardous terrain and on the sea and hazardous material incidents.

(c) Provide emergency medical care.

(d) Train, equip, maintain and supervise a force of fire fighting and rescue personnel.

(e) Monitor the construction and occupancy standards of buildings for the purposes of fire prevention.

(f) Provide educational programs related to fire prevention.

(g) Appoint the deputy fire chief and the private secretaries to the fire chief and the deputy fire chief.

(h) Perform such other duties as may be required by law.

(Reso. 94-267; 2006 General Election Charter Amendment Question No. 10)

CHAPTER 11
DEPARTMENT OF HUMAN RESOURCES

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

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. The following positions shall be exempt from the provisions of this chapter of the charter:

(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 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 secretaries 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.

The director of human resources shall determine the applicability of this section of the charter to specific employment or services in the executive branch.

(Reso. 90-295; 1992 General Election Charter Amendment Question Nos. 12, 21, 16 and 32C; Reso. 94-67 and 95-205; 1998 General Election Charter Amendment Question No. 3 (VI) and (VII); 1998 Reorganization; Reso. 09-252, 09-357 and 10-38; Reso 11-47)

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

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.

(1992 General Election Charter Amendment Question Nos. 26 and 32C; 1998 Reorganization; Reso. 02-39)

CHAPTER 12
DEPARTMENT OF INFORMATION TECHNOLOGY

Section 6-1202. Powers, Duties and Functions --

The director of information technology shall:

(a) Operate and maintain information technology and telecommunications systems for the city government, excluding those systems maintained by the board of water supply and any other semi-autonomous agencies created by ordinance.

(b) Provide technical expertise and support in information technology and telecommunication technology to the city government.

(c) Assist the managing director in information technology and telecommunication technology analyses and evaluation.

(d) Advise the mayor on information technology and telecommunication technology matters.

(e) Perform such other duties as may be required by law.

(Reso. 90-295 and 95-205; 1998 Reorganization; 2006 General Election Charter Amendment Question No. 12(a))

CHAPTER 14
DEPARTMENT OF PARKS AND RECREATION

Section 6-1403. Powers, Duties and Functions --

The director of parks and recreation shall:

(a) Advise the director of design and construction on the planning and design of the parks and recreational facilities of the city, and maintain and operate all such facilities.[19]

(b) Develop and implement programs for cultural, recreational and other leisure-time activities for the people of the city, except as otherwise provided by law.

(c) Beautify the public parks, facilities and streets of the city, including, but not limited to, the planting, trimming and maintaining of all shade trees, hedges and shrubs on such city parks, facilities and streets except hedges and shrubs on traffic medians, triangles, circles, and other traffic calming appurtenances.

(d) Process permit applications to use city parks and recreational facilities for free or affordable child day care programs for consideration by the council pursuant to Section 3-123 of this charter, provided that the director finds that such use does not interfere with the public's use of the property for park and recreational purposes.

(Reso. 192 (1974) and 94-150; 1998 Reorganization; 2007 Reorganization)

CHAPTER 16
POLICE DEPARTMENT

Section 6-1608. Political Activities Prohibited -- (Repealed; *2006 General Election Charter Amendment Question No. 12(d))*

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[19]The director of parks and recreation, as opposed to the city council, has the power to decide whether or not a concession should be permitted on park property. City Council v. Fasi, et al., 52 Haw. 3, 467 P.2d 576 (1970).

CHAPTER 17
DEPARTMENT OF TRANSPORTATION SERVICES

Section 6-1703. Powers, Duties and Functions --

1. The director of transportation services shall:

(a) Plan, operate and maintain transportation systems, including bikeways, except for activities relating to the city's fixed guideway mass transit system,* to meet public transportation needs, in accordance with the general plan and development plans, and advise on the design and construction thereof.

(b) Locate, select, install and maintain traffic control facilities and devices.

(c) Provide educational programs to promote traffic safety.

(d) Promulgate rules and regulations pursuant to standards established by law.

(e) Manage and maintain all commercial parking facilities except facilities that are attached or adjacent to a building or project managed by another city agency.

2. The director of transportation services shall have no power, duty, or function with respect to transportation systems, facilities, or programs which are under the jurisdiction of the public transit authority.

(Reso. 95-205; 1998 Reorganization; 2006 General Election Charter Amendment Question No. 8; Reso. 08-166; Reso. 09-252; Reso 15-68)

Section 6-1706. Pedestrian and Bicycle Friendly City --

It shall be one of the priorities of the department of transportation services to make Honolulu a pedestrian- and bicycle-friendly city. *(2006 General Election Charter Amendment Question No. 8)*

ARTICLE VII
BOARD OF WATER SUPPLY

Section 7-107. Personnel Administration; Centralized Purchasing; Auditing; Pension --

1. The department shall be subject to the civil service provisions of this charter.

2. The department shall be subject to the centralized purchasing and disposal of personal property provisions of this charter.

3. The department shall come within the purview of the performance audit conducted by the managing director and such audits as may be required by the council or conducted by the city auditor.

4. Pensions for officers and employees shall be governed by law. *(Reso. 02-39)*

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*Revision note: Text inserted based upon Resolution No. 09-252, CD1, to address citation error.

ARTICLE VIII
PROSECUTING ATTORNEY

Section 8-104. Powers, Duties and Functions[32] --

1. The prosecuting attorney shall:

(a) Attend all courts in the city and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the state and the ordinances and rules and regulations of the city.[33]

(b) Prosecute offenses against the laws of the state under the authority of the attorney general of the state.[34]

(c) Appear in every criminal case where there is a change of venue from the courts in the city and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the city.

(d) Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the prosecuting attorney has information that any such offenses have been committed, and for that purpose, take charge of criminal cases before the district judges either in person or by a deputy or by such other prosecuting officer or in such other manner as the prosecuting attorney shall designate with approval of the district court or in accordance with statute; draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration;[35] and investigate all matters which may properly come before the prosecuting attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the prosecuting attorney.[36]

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[32]Subpoena powers of prosecuting attorney are a matter of statewide concern and are limited to those authorized in HRS Section 28-2.5. Marsland v. First Hawaiian Bank, 70 Haw. 126, 764 P.2d 1228 (1988).

[33]Prosecuting attorney is not authorized by law to bring a civil action to abate a nuisance. Marsland v. Pang, 5 Haw. App. 463, 701 P.2d 175 (1985).

[34]The phrase "under the authority of the attorney general" is a recognition of the attorney general's status as the State's chief law enforcement officer and cannot sensibly be construed as a reservation of power to usurp, at the attorney general's sole discretion, the functions of the public prosecutor. The attorney general may supersede the public prosecutor in the event of serious dereliction of duty to act or in the unusual case of serious impropriety should the prosecutor choose to act. Amemiya v. Sapienza, 63 Haw. 424, 629 P.2d 1126 (1981).

[35]The term "attend before and give advice to the grand jury" merely describes a general function and does not affect the manner in which the grand jury investigatory and indictment process is to be conducted, or require instruction on such items as the availability of defenses. State v. Freedle, 1 Haw. App. 396, 620 P.2d 740 (1980). See also State v. Bell, 60 Haw. 241, 589 P.2d 517 (1978).

[36]Private counsel retained by prosecuting attorney may be supervised by a duly appointed deputy. Okuda v. Ching, 71 Haw. 140, 785 P.2d 943 (1990).

2. The prosecuting attorney may[†]:

(a) Research, evaluate, and make recommendations regarding crime, crime prevention, and the criminal justice system to the governor, the legislature, the judiciary, the council, the mayor, the Honolulu police department and other criminal justice agencies, or the general public, as the prosecuting attorney deems appropriate.

(b) Provide crime prevention training programs for law enforcement agencies, citizens, businesses, and civic groups.

(c) Develop public education programs through various broadcast or print media, to provide the general public information that will assist citizens in developing the knowledge and confidence to prevent crime and to avoid being victims of crime.

(d) Receive and expend financial grants, donations and other funds as permitted by the provisions of the revised charter, city ordinances and applicable city, state, and federal financial and budget policies for crime research, prevention, and education.

(Reso. 78-279, 83-357, 84-197 and 07-223)

ARTICLE IX
FINANCIAL ADMINISTRATION

CHAPTER 1
BUDGETING

Section 9-106. Administration and Enforcement of the Budget Ordinances --

1. Administration and enforcement of the legislative budget ordinance: Immediately following the enactment of the legislative budget ordinance, the presiding officer of the council shall submit to the director of budget and fiscal services a schedule showing the expenditures of the legislative branch anticipated for each quarter of the fiscal year. The schedule shall not require the approval of nor can it be altered by the mayor, and the council may proceed without any other authority to incur obligations and make expenditures after the schedule has been submitted. The director of budget and fiscal services shall approve or issue any requisition, purchase order, voucher, warrant or contract, in accordance with the schedule and upon request of the presiding officer of the council. Barring judicial order prohibiting the honoring of any specific requisition, purchase order, voucher, warrant or contract, the director of budget and fiscal services shall process the same for payment within three working days from the date of receipt thereof. Appropriations for the legislative branch shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse at the end of the fiscal year.

2. Administration and enforcement of the executive operating budget ordinance:

(a) The enactment of the executive operating budget ordinance or any supplementary appropriation shall constitute an appropriation of the sums specified therein for the purposes

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[†]The charter did not grant the prosecuting attorney the authority to use public funds and resources to advocate for a proposed constitutional amendment in a general election, nor was conduct authorized by statute prescribing duties of the attorney general for crime research, prevention and education. Rees v. Carlisle, 113 Hawai'i 446, 153 P.3d 1131 (2007). [Note: When a new edition of the Charter is published, the revisor of the charter shall numerically renumber all of the charter footnotes.]

and from the funds indicated. Such appropriation shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse to the end of the fiscal year. Executive agencies authorized to make expenditures under the executive operating budget ordinance may proceed without other authority from the council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available.

(b) Immediately following the enactment of the executive operating budget ordinance, the heads of all executive agencies shall submit to the director of budget and fiscal services schedules, supported by work programs, showing the expenditures anticipated for each quarter of the fiscal year.

(c) The approval of an expenditure schedule by the mayor shall constitute a budgetary allotment which shall, unless a revision thereof is approved by the mayor, be binding upon such agencies. The director of budget and fiscal services shall approve or issue no requisition, purchase order, voucher or warrant that is not in accordance with an allotment.

(d) The allotments herein provided may be altered at any time by the mayor. The mayor shall direct appropriate revisions in allotments to keep expenditures within the revenues received or anticipated.

(e) Any part of an allotment which is not expended or encumbered shall lapse at the end of the allotment period.

(f) The mayor may transfer an unencumbered appropriation balance or portion thereof within the same department only as prescribed by law. Transfers between departments shall be made only by the council by ordinance upon the recommendation of the mayor.

(g) The director of budget and fiscal services and the director's surety shall be liable for moneys withdrawn from any operating fund other than in accordance with the executive operating budget ordinance and allotments.

3. Administration and enforcement of the executive capital budget ordinance:

(a) Appropriations authorized in the executive capital budget ordinance or any supplementary appropriation shall be considered valid only for the fiscal year for which made and for twelve months thereafter, and any part of such appropriations which is not expended or encumbered shall lapse twelve months after the end of the fiscal year. Agencies authorized to make expenditures under the executive capital budget ordinance may proceed without other authority from the council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available.

(b) The director of budget and fiscal services shall be responsible for the enforcement of the executive capital budget ordinance to the same extent that the director is responsible for the enforcement of the executive operating budget ordinance.

(Reso. 78-273, 83-357, 86-237, 90-295 and 95-205; 1998 General Election Charter Amendment Question No. 2(VII); 2006 General Election Charter Amendment Question No. 11)

CHAPTER 2
FUND ADMINISTRATION

Section 9-202. Creation of Funds --

In addition to the funds established by this charter, the council, on its own initiative or on the recommendation of the mayor, may establish other funds when the council deems it necessary and when no appropriate class of funds exists. *(Reso. 12-113)*

Section 9-204. Clean Water and Natural Lands Fund and Affordable Housing Fund --

1. There shall be established a Clean Water and Natural Lands Fund and an Affordable Housing Fund. In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one percent of the estimated real property tax revenues, one-half of which shall be deposited into the Clean Water and Natural Lands Fund and the remaining one-half of which shall be deposited into the Affordable Housing Fund.

2. Moneys in the Clean Water and Natural Lands Fund shall be used to purchase or otherwise acquire real estate or any interest therein for land conservation in the city for the following purposes: protection of watershed lands to preserve water quality and water supply; preservation of forests, beaches, coastal areas and agricultural lands; public outdoor recreation and education, including access to beaches and mountains; preservation of historic or culturally important land areas and sites; protection of significant habitats or ecosystems, including buffer zones; conservation of land in order to reduce erosion, floods, landslides, and runoff; and acquisition of public access to public land and open space.

3. Moneys in the Affordable Housing Fund shall be used to provide and maintain affordable housing for persons earning less than fifty percent of the median household income in the city for the following purposes: provision and expansion of affordable housing and suitable living environments principally for persons of low and moderate income through land acquisition, development, construction, and maintenance of affordable housing for sale or for rental, provided that the housing remains affordable in perpetuity.

4. The moneys in each fund may also be used for the payment of principal, interest, and premium, if any, due with respect to bonds issued subsequent to enactment of this section and pursuant to Sections 3-116 or 3-117, in whole or in part, for the purposes enumerated in subsections 2 and 3 of this section and for the payment of costs associated with the purchase, redemption or refunding of such bonds.

5. At any given time, no more than five percent of the moneys in each fund shall be used for administrative expenses.

6. Any balance remaining in each fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in each fund shall not be used for any purposes except those listed in this section.

7. The council shall by ordinance establish procedures for the administration and expenditure of moneys in each fund. The appropriations to each fund shall not substitute for, but shall be in addition to, those appropriations historically made for the purposes stated in this section. *(2006 General Election Charter Amendment Question No. 3)*

Section 9-205. Grants in Aid Fund --

1. There shall be established a Grants in Aid Fund. Monies in the Grants in Aid Fund shall be used by the city to award grants in aid to federal income tax exempt non-profit organizations that provide services to economically and/or socially disadvantaged populations or provide services for public benefit in the areas of the arts, culture, economic development or the environment.

2. In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one-half of one percent of the estimated general fund revenues which shall be deposited into the Grants in Aid Fund.

3. No less than $250,000 from the Grants in Aid Fund shall be expended annually in each council district.

4. At any given time, no more than five percent of the moneys in the Grants in Aid Fund shall be used for administrative expenses.

5. Any balance remaining in the fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in the fund shall not be used for any purpose except those listed in this section.

6. The council may waive the requirements of this section of the charter pertaining to the annual appropriation of general fund revenues to the grants in aid fund for any particular fiscal year, when the council finds by a two-thirds vote of its entire membership that an emergency due to a public calamity exists or the city could not otherwise fulfill its legal obligations.

7. There shall be established a grants in aid advisory commission to advise the city on grants issued under this section. The commission shall consist of seven members appointed by the mayor who shall serve for staggered terms of five years and until their successors have been appointed and qualified. The initial appointments shall commence no later than January 15, 2013, and shall be as follows:

(a) For a two-year term, two members.

(b) For a three-year term, two members.

(c) For a four-year term, two members.

(d) For a five-year term, one member.

8. The council shall by ordinance establish procedures for the administration and expenditure of the moneys in the fund. *(Reso. 12-44)*

CHAPTER 3
PROCUREMENT AND DISPOSITION OF PROPERTY

Section 9-301. Centralized Purchasing --

1. The department of budget and fiscal services shall be responsible for the procurement of all materials, supplies, equipment and services required by any agency of the city.

2. There shall be a standardization committee composed of five members. The mayor shall appoint four members, each of whom shall be from a separate department. The fifth member shall be a representative for the department of budget and fiscal services who shall serve as chair of the committee. The committee shall classify all materials, supplies, and equipment commonly used by the various agencies of the city and shall prepare and adopt standards and specifications for such materials, supplies and equipment.

3. All purchases and contracts for materials, supplies, equipment and services shall be made by advertising, except that such purchases and contracts may be negotiated without advertising if:

(a) The public exigency will not admit of the delay incident to advertising.

(b) The amount involved does not exceed limits specified for various types of contracts in applicable state statutes, as the same may be amended from time to time.

(c) It is impracticable to secure competitive bidding for materials, supplies and equipment, including animals, plants, food and fodder for animals in the zoo, non-processed agricultural products, patented or proprietary articles and books and publications.

(d) It is determined that the procurement of equipment determined to be technical equipment is necessary to assure standardization of the equipment and interchangeability of

parts and that such standardization and interchangeability are necessary in the interest of economy.

The advertisement for bids shall be made for a sufficient time before the purchase or contract, and specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of the types of materials, supplies, equipment and services necessary to meet the requirements of the agency concerned.

All bids shall be publicly opened at the time and place stated in the advertisement. Award shall be made with reasonable promptness by written notice to that responsible bidder, whose bid, conforming to the invitation for bids, will be most advantageous to the city, price and other factors considered.

4. Purchase orders shall be issued upon the endorsement of the purchasing administrator, and such endorsement shall be made in accordance with rules and regulations promulgated by the director of budget and fiscal services.

5. The director of budget and fiscal services shall, from time to time, secure from all agencies estimates of their needs for articles of common use and shall, when practicable, consolidate requisitions in order to secure the benefits of quantity purchases, and to that end, when authorized by the council, cooperate with other public agencies.

6. The director of budget and fiscal services shall by rules and regulations provide for:

(a) Emergency purchases which might be required.

(b) Petty cash funds or blanket purchase orders or both.

(c) Noncompetitive purchases and contracts provided for under Subsection 9-301.3(c) of this charter.

(d) Approval and signing procedures related to the issuance of purchase orders.

(e) Such other matters as the director may reasonably deem necessary for the effective administration and implementation of federal, state and city purchasing and contracting laws.

7. The director of budget and fiscal services shall require such guarantees of performance by vendors as in the director's opinion may be necessary or as may be prescribed by ordinance. *(Reso. 90-295; 1992 General Election Charter Amendment Question Nos. 28, 29 and 32B; Reso. 95-205; 1998 General Election Charter Amendment Question No. 2 (VII); Reso. 10-110)*

Section 9-302. Disposition of Personal Property --

All agencies, the council and its offices, having materials, supplies or equipment which are not useful to them, shall, from time to time, and at least annually, furnish a list thereof to the director of budget and fiscal services who shall examine such property, and if the same is found to be usable, it shall be inventoried for use by the city. If it is found to be unusable for public purposes, the director of budget and fiscal services, shall dispose of the property by public auction, competitive bid, or other appropriate method, as provided for in rules and regulations of the director, and the proceeds shall be placed in the fund from which the original purchase was made. *(1998 General Election Charter Amendment Question No. 2 (VII); Reso. 10-110)*

ARTICLE XI
STANDARDS OF CONDUCT

Section 11-102. Conflicts of Interest --

1. No elected or appointed officer or employee shall:

(a) Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of such person's official duties. Nothing herein shall preclude the solicitation or acceptance of lawful contributions for election campaigns.

(b) Disclose confidential information gained by reason of such person's office or position or use such information for the personal gain or benefit of anyone.

(c) Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.

(d) Receive any compensation for such person's services as an officer or employee of the city from any source other than the city, except as otherwise provided by this charter or by ordinance.

(e) Represent private interests in any action or proceeding against the interests of the city or appear in behalf of private interests before any agency, except as otherwise provided by law.

2. No appointed officer shall participate in or make any decision on a city matter if:

(a) He or she was directly involved in the matter while employed with a private entity in the twelve months immediately preceding the start of the officer's current employment with the city; and

(b) Such prior involvement on behalf of a private entity may tend to impair the independence of judgment in the performance of the officer's official duties.

The prohibition in this subsection shall apply for a period of twelve months from the start of the officer's current employment with the city. The officer may apply for a waiver from this prohibition to the ethics commission, which shall determine, based on the relevant circumstances, whether the waiver is in the best interests of the public. For the purposes of this subsection, the term "officer" shall exclude any member of a board or commission who is not the administrative head of an agency. *(Reso. 83-357 and 09-336)*

Section 11-106. Penalties and Disciplinary Action for Violations --

The failure to comply with or any violation of the standards of conduct established by this article of the charter or by ordinance shall be grounds for impeachment of elected officers and for the removal from office or from employment of all other officers and employees. The appointing authority may, upon the recommendation of the ethics commission, reprimand, put on probation, demote, suspend or discharge an employee found to have violated the standards of conduct established by this article of the charter or by ordinance. The ethics commission may also impose civil fines established by ordinance for violations of the standards of conduct committed by elected and appointed officers and employees of the city with significant discretionary or fiscal power as determined by ordinance. *(2006 General Election Charter Amendment Question No. 5; Reso. 07-384)*

Section 11-107. Ethics Commission --

There shall be within the department of the corporation counsel for administrative purposes only an ethics commission which shall consist of seven members. The commission shall be governed by the provisions of Section 13-103 of this charter. In accordance with the prohibition

in Article XIV of the Constitution of the State of Hawaii, the members of the ethics commission shall be prohibited from taking an active part in political management or in political campaigns.

The commission may appoint such staff and engage consultants as is necessary to assist it in the performance of its duties. Such staff and consultants may include attorneys who may advise the commission independently of the department of the corporation counsel. All staff positions shall be exempt from the provisions of Chapter 11 of Article VI of this charter, but such staff positions, except the position of executive director, shall be included in the position classification plan. The executive director shall be an attorney qualified to practice law in the State of Hawaii. The salary of the executive director shall be fixed by ordinance.

The commission is authorized to hold hearings and to conduct investigations concerning the application of this article of the charter and shall have the powers provided in Section 13-114 of this charter.

The commission may, on its own initiative, render advisory opinions with respect to this article of the charter. An advisory opinion shall be rendered pursuant to a written request of any elected or appointed officer or employee concerned and may be rendered pursuant to the request of any person. The commission shall publish its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of the persons involved.

The commission may impose civil fines established by ordinance against elected and appointed officers and employees of the city with significant discretionary or fiscal power as determined by ordinance, found by the commission to have violated the standards of conduct established by this article of the charter or by ordinance. The commission shall recommend appropriate disciplinary action against officers and employees found to have violated the standards of conduct established by this article of the charter or by ordinance. The appointing authority shall promptly notify the commission of the action taken on the recommendation. *(Reso. 84-234; 1998 Reorganization; 2006 General Election Charter Amendment Question Nos. 5 and 12(c); Reso. 07-384)*

ARTICLE XII
RECALL AND IMPEACHMENT

CHAPTER 1
RECALL OF ELECTED OFFICIALS

Section 12-103. Recall Petition; Recall Election --

The recall petition shall require each signing voter's signature, address, council district, and the date of signing. Signatures on a recall petition may be on separate sheets but each sheet shall have appended to it the affidavit of the person who circulated that sheet of the petition, that to the best of the affiant's knowledge and belief the persons whose signatures appear on the sheet are duly registered voters of the city, that they signed with full knowledge of the contents of the petition, and that their residences are correctly given.

A recall petition shall be tendered in its entirety for filing with the city clerk with a transmittal letter to the city clerk. Upon filing of such petition with the city clerk, the city clerk shall examine it to determine whether it contains a sufficient number of apparently genuine signatures of registered voters. The city clerk may question the genuineness of any signature or signatures appearing on the recall petition and if the city clerk finds that any such signature or

signatures are not genuine, the city clerk shall disregard them in determining whether the petition contains a sufficient number of signatures. The city clerk shall also disregard any signature dated more than sixty days before the petition was tendered for filing. The city clerk shall eliminate any sheet of the petition which is not accompanied by the required affidavit of the person who circulated that sheet of the petition. The invalidity of any sheet of the petition shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such an invalid sheet. The city clerk shall complete the examination of the petition within twenty working days after the date of the filing with the city clerk and shall thereupon certify the petition or reject the petition.

As soon as the city clerk has certified the recall petition, the city clerk shall notify the elected officer that the examination has been completed and the petition has been certified. Upon receipt of such notice, the elected officer may resign from office and thereupon the recall proceedings shall terminate.

If the elected officer does not resign from office within ten days after notice of the certification of such petition shall have been given to such elected officer, the city clerk shall arrange a recall election. If a general or special city or state election is to be held not less than thirty days nor more than ninety days after the ten days have expired, the recall question shall be placed before the voters at such an election. Otherwise a special recall election shall be fixed for a date not earlier than thirty days nor later than ninety days after ten days have expired. The elected officer may resign at any time prior to the recall election and thereupon the election shall not be held.

The following question shall be presented to each voter in a recall: "Shall (name of elected officer) be recalled and removed from the office of (title of office)?"

If a majority of the registered voters who vote on the question at a recall election shall vote "Yes," the elected officer shall be deemed recalled and removed from office. Otherwise, the said officer shall remain in office.[38]

No person, who has been removed from elected office or who has resigned from such an office after a recall petition directed to the said person has been filed, shall be eligible for election or appointment to any office of the city within two years after said person's removal or resignation.

No recall petition shall be filed against an elected officer within the first or the last year of the officer's term or within six months after an unsuccessful recall election against such officer. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 32A(15) and 32A(16); 2006 General Election Charter Amendment Question No. 12(f); Reso. 10-64)*

CHAPTER 2
IMPEACHMENT OF ELECTED OFFICERS

Section 12-201. Impeachment of the Mayor --

The mayor may be impeached for malfeasance, misfeasance or non-feasance in office. The courts of the State of Hawaii shall have jurisdiction as provided by applicable law over any

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[38]Blank ballots are neither a yes nor a no vote "on the question" of recall and may not be considered in determining total vote for purposes of determining majority vote. Republican Party of Hawaii v. Waihee, 68 Haw. 258, 709 P.2d 980 (1985).

proceeding for the removal of the mayor who may be charged on any of the foregoing grounds. The charges shall be set forth in writing in a petition for impeachment signed by not less than five thousand duly registered voters of the city, and said signatures shall be necessary only for the purpose of filing the petition. The petition having once been filed, hearings shall be held on all such charges. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 14 and 32A(9); Reso. 08-135)*

Section 12-202. Impeachment of a Councilmember --

Any councilmember may be impeached for malfeasance, misfeasance or non-feasance in office or for interference with the performance of the duties of any officer or employee in any executive agency of the city government. The courts of the State of Hawaii shall have jurisdiction as provided by applicable law over any proceeding for the removal of a councilmember who may be charged on any of the foregoing grounds. The charges shall be set forth in writing in a petition for impeachment signed by not less than one thousand duly registered voters of the council district for the removal of a councilmember, and said signatures shall be necessary only for the purpose of filing the petition. The petition having once been filed, hearings shall be held on all such charges. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 14 and 32A(4); Reso. 08-135)*

Section 12-203. Impeachment of the Prosecuting Attorney --

The prosecuting attorney may be impeached for malfeasance, misfeasance or non-feasance in office. The courts of the State of Hawaii shall have jurisdiction as provided by applicable law over any proceeding for the removal of the prosecuting attorney who may be charged on any of the foregoing grounds. The charges shall be set forth in writing in a petition for impeachment signed by not less than five hundred duly registered voters of the city, and said signatures shall be necessary only for the purpose of filing the petition. The petition having once been filed, hearings shall be held on all such charges. *(1992 General Election Charter Amendment Question No. 32A(13); cf. Question No. 15; Reso. 08-135)*

ARTICLE XIII
GENERAL PROVISIONS

Section 13-106. Public Hearings; Notice --

1. No public hearing shall be held by any agency or the council, unless public notice is given prior to such hearing.

2. Notice of any public hearing shall be adequately publicized at least ten days prior to such hearing via an electronic medium, such as the Internet, and in a daily newspaper of general circulation in the city and may be advertised, as deemed helpful, in such other newspapers and through communications media as will afford the public maximum information concerning such hearing. The notice shall include:

(a) The date, time and place of such hearing.

(b) A statement in plain language of the nature or purpose, including the issues involved, if any, of such hearing.

(c) A statement that all interested persons shall be afforded the opportunity of being heard.

(2006 General Election Charter Amendment Question No. 12(g))

Section 13-116. City Elections --

1. In general: City elections shall be conducted in accordance with the election laws of the state insofar as applicable, but all city elective officers shall be elected by nonpartisan special elections. Except as otherwise provided in this charter, such special elections shall be held in conjunction with the primary and general elections of the applicable year; a special election held in conjunction with the primary election shall be designated the first special election and a special election held in conjunction with the general election shall be designated the second special election. In the case of the council, such special elections shall be held in 2002 and every second year thereafter. In the case of the mayor and the prosecuting attorney, such special elections shall be held every fourth year following the 1992 election.

2. Special elections:

(a) If there is no more than one candidate for any city elective office, then the name of that candidate shall be placed on the ballot for the first special election. The candidate shall be deemed elected at the first special election regardless of the number of votes received.

(b) If there are only two candidates for any city elective office, the names of the two candidates shall be placed on the ballot for the second special election. At the second special election, the candidate receiving the highest number of votes cast for that office shall be deemed elected.

(c) If there are three or more candidates for any city elective office, the names of the candidates shall be placed on the ballot for the first special election. If any candidate receives a majority of votes cast in the first special election for that office, that candidate shall be deemed elected. However, if no candidate receives a majority of votes cast in the first special election for that office, then the names of the two candidates receiving the highest number of votes cast for that office shall be placed on the ballot for the second special election. At the second special election, the candidate receiving the highest number of votes cast for that office shall be deemed elected.

(1992 General Election Charter Amendment Question Nos. 4 and 32A(6); 1998 General Election Charter Amendment Question No. 8(IV); 2006 General Election Charter Amendment Question No. 6)

Section 13-124. Public Notices via Electronic Medium --

Whenever a public notice is required by this charter or by ordinance to be published in a daily newspaper, the public notice shall also be distributed via an electronic medium, such as the Internet, within the same timeframe as the newspaper publication. *(2006 General Election Charter Amendment Question No. 12(g))*

ARTICLE XIV
NEIGHBORHOODS AND NEIGHBORHOOD BOARDS

Section 14-102. Neighborhood Commission --

There shall be a neighborhood commission which shall consist of nine members chosen from the city at large. The mayor shall appoint four members, at least two of whom shall have served on a neighborhood board for at least one full term. The presiding officer of the council, with the approval of the council, shall appoint four members, at least two of whom shall have served on a neighborhood board for at least one full term. The ninth member shall be appointed by the mayor and confirmed by the council. The ninth member shall have served on a neighborhood board for at least one full term.

The commission shall elect a chair from among its members. Any vacancy in the commission shall be filled in the same manner as for an original appointment.

The commission shall act by majority vote of its membership and shall establish its own procedures. Commission members shall be compensated and reimbursed for their necessary expenses as provided by ordinance. The council shall appropriate funds to the neighborhood commission necessary for the performance of its official duties.

The terms of members initially appointed shall be for five years, and their successors shall serve for staggered terms of five years in the manner provided in Section 13-103(c) of this charter. *(Reso. 83-357; 1992 General Election Charter Amendment Question No. 25; Reso. 04-18)*

ARTICLE XV
CHARTER AMENDMENT OR REVISION

Section 15-101. Initiation of Amendments or Revisions --

Except as hereinafter provided, amendments or revisions of this charter may be initiated only in the following manner:

(a) By resolution of the council adopted after three readings on separate days and passed by an affirmative vote of two-thirds of its entire membership at each reading.

(b) By petition filed with the city clerk, signed by duly registered voters equal in number to at least ten percent of the total voters registered in the last regular mayoral election, setting forth the proposed amendments or revisions. Such petition shall designate and authorize not less than three nor more than five of the signers thereto to approve any alteration or change in the form or language or any restatement of the text of the proposed amendments or revisions which may be made by the corporation counsel.

Such petition shall include each signing voter's signature, residence, and date of signing. Signatures may be on separate sheets, but each sheet shall have appended to it the affidavit of the person who circulated that sheet of the petition, that to the best of the affiant's knowledge and belief the persons whose signatures appear on the sheet are duly registered voters of the city, that they signed with full knowledge of the contents of the petition and that their residences are correctly given.

Such petition shall be filed with the city clerk at least forty-five days before the city first special election preceding the general election of that year. Such petition shall be tendered in its entirety for filing with the city clerk with a transmittal letter to the city clerk. Upon filing

of such petition with the city clerk, the city clerk shall examine it to determine whether it contains a sufficient number of apparently genuine signatures of registered voters. The city clerk may question the genuineness of any signature or signatures appearing on the petition, and if the city clerk finds that any such signature or signatures are not genuine, the city clerk shall disregard them in determining whether the petition contains a sufficient number of signatures. The city clerk shall eliminate any sheet of the petition which is not accompanied by the required affidavit of the person who circulated that sheet of the petition. The invalidity of any sheet shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such invalid sheet. The city clerk shall complete the examination of the petition within twenty working days after the date of filing and shall certify the petition or shall reject the petition.

Notwithstanding the foregoing, the corporation counsel, as revisor, may, subject to the provisions of Section 4-202 of this charter, prepare supplements or editions of the charter containing language which reflects an exercise of the reorganization power as prescribed therein. *(Reso. 83-357; 1992 General Election Charter Amendment Question Nos. 15 and 32A(3); 1998 General Election Charter Amendment Question No. 5(II); 2006 General Election Charter Amendment Question No. 12(f); Reso. 10-64)*

Section 15-105. Mandatory Review --

1. After November 1 of every year ending in "4," but before the immediate following February 1, the mayor and the presiding officer of the council shall appoint a charter commission consisting of thirteen members to study and review the operation of the government of the city under this charter. The mayor shall appoint six members; the presiding officer of the council, with the approval of the council, shall appoint six members; and the thirteenth member shall be appointed by the mayor and confirmed by the council.

For the 2005 charter commission, Section 16-127 shall prevail over any conflicting provision of this subsection.

2. The commission shall elect a chair from among its members. Any vacancy in the commission shall be filled in the same manner as for an original appointment, except as otherwise provided under Section 16-127 for the 2005 charter commission. The commission shall act by majority vote of its membership and shall establish its own procedures. The commission shall be recognized as a constituent body, and its members shall not, in any manner, be deemed officers of the city. The commission and its members shall be subject only to provisions of this article, Section 3-114, and Section 3-502 of the charter.

3. The commission may propose amendments to the existing charter or a draft of a revised charter, which shall be submitted to the city clerk at any time prior to September 1 of the year ending in "6" that immediately follows the appointment of the commission. Upon receipt of the amendments or revised charter, together with ballot language prepared by the commission, the clerk shall provide for the submission of such amendments or revised charter to the electors of the city at the next general election.

4. The commission shall publish, not less than forty-five days before any election at which charter amendments or a revised charter are submitted, at least once in a daily newspaper of general circulation within the city, a brief digest of the amendments or revised charter and a notice to the electorate that copies of the amendments or revised charter are available at the office of the city clerk. *(Reso. 83-357; 1992 General Election Charter Amendment Question No. 31; Reso. 02-39 and 04-178)*

Section 15-107. Administrative Rules --

The city clerk may promulgate administrative rules to implement this chapter. The rules may establish requirements for a petition and may establish a method for examination of a petition by statistical random sampling examination and provide procedures for challenge of a sampling examination. *(Reso. 10-64)*

ARTICLE XVI
TRANSITION SCHEDULE

Section 16-123. Transition Provisions Concerning the Transfer of Audit Functions to the Office of City Auditor --

1. All lawful obligations and liabilities owed by or to the office of council services relating to financial and performance audits on June 30, 2003 shall remain in effect on July 1, 2003. The obligations and liabilities shall be assumed by the office of the city auditor.

All contracts held by the office of council services relating to financial and performance audits, which are to remain effective after June 30, 2003, shall be assumed by the office of the city auditor. The contracts shall continue in effect until fulfilled or lawfully terminated.

All financial and performance audit activities administered by the office of council services on June 30, 2003 shall be assumed by the office of the city auditor on July 1, 2003.

2. On July 1, 2003, all records, data, and information held by the office of council services relating to financial and performance audits which have not been completed as of June 30, 2003 shall be transferred to the office of the city auditor.

3. The assistant legislative auditor position and the employee occupying the position in the office of council services on June 30, 2003 shall continue with the office of the city auditor on July 1, 2003. The employee shall continue service without any loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the charter amendments of this resolution. Nothing in this subsection, however, shall be construed as preventing future changes in the employee's status pursuant to the city auditor's powers with respect to personnel in the office of the city auditor. *(Reso. 02-39)*

Section 16-124. Neighborhood Commission Transition Provisions --

1. For the purpose of this section:

"Compliance with this Charter amendment" means having on the neighborhood commission (1) at least two of the council's appointees with service of at least one full term on a neighborhood board and (2) at least two of the mayor's unilateral appointees with service of at least one full term on a neighborhood board.

"Council's appointees" means members of the neighborhood commission who are appointed by the council presiding officer, with the approval of the council.

"Effective date" means the effective date of this Charter amendment.

"Mayor's unilateral appointees" means members of the neighborhood commission who are appointed by the mayor without confirmation by the council.

2. This Charter amendment shall not affect the term of any member of the neighborhood commission who is serving on the effective date. Unless vacating office sooner, each such member shall continue in service on the commission until the expiration of the member's term or appointment of a successor.

3. If, on the effective date, the mayor's unilateral appointees are not in compliance with this Charter amendment, the mayor shall make appointments to fill vacancies and new terms so that the mayor's unilateral appointees will come into compliance as soon as possible.

If, on the effective date, the council's appointees are not in compliance with this Charter amendment, the council's presiding officer and council shall respectively make and approve appointments to fill vacancies and new terms so that the council's appointees will come into compliance as soon as possible. *(Reso. 04-18)*

Section 16-125. Applicability of Provisions Concerning Temporary Replacement of Councilmember --

Section 3-124 shall apply if a councilmember is called to active military duty before, on, or after the effective date of that Section. *(Reso. 04-113)*

Section 16-126. 2004 Council-Initiated Charter Amendments --

The provisions of subsection 15-102.1 requiring any resolution of the council initiating an amendment of the charter to be approved by the mayor in order to be submitted to the electorate at the general election immediately preceding the general election at which a charter commission is authorized to submit its own proposals shall not apply to the charter amendment resolutions of the council that are submitted to the electorate at the 2004 general election. *(Reso. 04-178)*

Section 16-127. 2005 Charter Commission --

1. Except as otherwise provided by this section, the mayor and the presiding officer of the council, with the approval of the council, shall appoint the members of the 2005 charter commission in accordance with section 15-105 no later than December 1, 2004.

For the purpose of this section:

(a) "Incoming mayor" means the mayor taking office at noon of January 2, 2005;

(b) "Outgoing mayor" means the mayor leaving office at 11:59 a.m. on January 2, 2005; and

(c) "Thirteenth member" means the member of the 2005 charter commission who is suppose to be appointed by the mayor and confirmed by the council.

2. If the outgoing mayor does not appoint by December 1, 2004 a member to the 2005 charter commission who the outgoing mayor may appoint without council confirmation, neither the outgoing mayor nor incoming mayor shall appoint such member to the commission. Instead, the council shall appoint before February 1, 2005 such member without necessity of mayoral approval.

3. The outgoing mayor shall send to the council the nomination of a person to serve as the thirteenth member as soon as possible. If a person nominated by the outgoing mayor is rejected by the council, the outgoing mayor may nominate a replacement until someone is confirmed by the council.

If no person nominated by the outgoing mayor is confirmed before noon of January 2, 2005, then the incoming mayor shall send to the council the nomination of a person to serve as the thirteenth member as soon as possible. If a person nominated by the incoming mayor is rejected by the council, the incoming mayor may nominate a replacement until someone is confirmed by the council.

4. A vacancy on the 2005 charter commission shall be filled by the appointing authority who made the original appointment; except that:

(a) If the original appointment was made by the outgoing mayor, the vacancy shall be filled by the mayor serving on the date the vacancy occurs; and

(b) If the original appointment was supposed to have been made by the mayor, but instead was made by the council pursuant to subsection 2, the vacancy shall be filled by the mayor serving on the date the vacancy occurs.

(Reso. 04-178)

Section 16-128. Effective Date of Revisions --

All provisions of the amendments to the charter of the City and County of Honolulu, approved on November 7, 2006, shall become effective as of the second day of January 2007, except as otherwise provided. *(2006 General Election Charter Amendments, in general)*

Section 16-129. Transition Provisions Concerning the Establishment of the Honolulu Authority for Rapid Transportation --

1. All civil service officers and employees holding positions with the rapid transit division, department of transportation services, on June 30, 2011, shall be transferred to the Honolulu Authority for Rapid Transportation on July 1, 2011. The civil service officers and employees shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the transfer. Nothing in this subsection, however, shall be construed as preventing future changes in status pursuant to the civil service provisions of this charter.

2. All lawful obligations and liabilities owed by or to the City and County of Honolulu relating to the city's fixed guideway mass transit system* on June 30, 2011 shall remain in effect on July 1, 2011. The obligations and liabilities shall be assumed by the authority.

3. All records, property, and equipment whatsoever of any office, division, department, board, commission, authority, or agency, the functions of which, or some of the functions of which, are assigned to any other agency by the amendments to this charter approved on November 2, 2010, shall be transferred and delivered to the agency to which such functions are assigned. *(Reso. 09-252)*

Section 16-130. Transition Provisions for Liquor Administrator and Deputy Liquor Administrator --

1. The civil service positions of the liquor administrator and of the deputy liquor administrator of the liquor commission shall be abolished as of the end of the day, June 30, 2011.

2. Effective July 1, 2011, the positions of the liquor administrator and the deputy liquor administrator shall be established in the liquor commission and shall be exempt from civil service.

3. An employee holding a permanent civil service appointment on June 30, 2011 to the position of the liquor administrator of the liquor commission or to the position of deputy liquor administrator shall be afforded such rights under civil service rules as are applicable to those whose civil service position has been abolished. Nothing in this section shall be construed as disqualifying such individuals from appointment after June 30, 2011 to the position of liquor administrator or deputy liquor administrator.

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*Revision note: Text inserted based upon Resolution No. 09-252, CD1, to address citation error.

4. The liquor commission may select an individual for the exempt civil service position of liquor administrator prior to July 1, 2011, but the appointment to such position shall not take effect until July 1, 2011 or thereafter. *(Reso. 09-357)*

Section 16-131. Transition Provisions Concerning the Transfer of Duties and Functions of the storm water quality branch --

Effective on July 1, 2015, the duties, and functions of the department of environmental services relating to its storm water quality branch shall be transferred to and assumed by the department of facility maintenance.

1. All civil service officers and employees holding positions or functions in the storm water quality branch within the department of environmental services, shall be transferred to the department of facility maintenance effective on July 1, 2015. The civil service officers and employees shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the transfer. Nothing in this subsection, however, shall be construed as preventing future changes in status pursuant to the civil service provisions of this charter.

2. All lawful obligations, liabilities, permits, and contracts of the city which relate to the duties and functions of the storm water quality branch, and which are administered by the department of environmental services, shall be transferred to and thereafter be administered by the department of facility maintenance, effective on July 1, 2015. The obligations, liabilities, and contracts transferred shall continue in effect until discharged or lawfully terminated.

3. All records, property, and equipment utilized by the storm water quality branch in carrying out its duties and functions shall be transferred to and assumed by the department of facility maintenance, effective on July 1, 2015.

4. Notwithstanding the foregoing, the city shall obtain any required approvals from the State or Federal government for the transfer of duties with respect to the city's storm water National Pollution Discharge Elimination permit, and the transfer effective dates set forth above may be delayed until all such necessary approvals have been obtained. (Reso. 15-10, CD1)

ARTICLE XVII
PUBLIC TRANSIT AUTHORITY

Section 17-101. Organization --

There shall be a public transit authority, to be known as the "Honolulu Authority for Rapid Transportation," consisting of a board of directors, executive director, and the necessary staff. *(Reso. 09-252)*

Section 17-102. Definitions --

For the purposes of this article:

"Authority" shall mean the governmental unit known as the "Honolulu Authority for Rapid Transportation."

"Board" shall mean the policy-making body, consisting of ten members of the board of directors, nine voting members and one non-voting member.

"Executive director" shall mean the executive director of the public transit authority. *(Reso. 09-252)*

Section 17-103. Powers, Duties, and Functions --

1. The public transit authority shall have authority to develop, operate, maintain and expand the city fixed guideway system as provided in this article.

2. To perform its duties and functions, the transit authority shall have the following general powers:

(a) To make and execute contracts, project labor agreements and other instruments requiring execution by the authority on such terms as the authority may deem necessary and convenient or desirable with any person or entity in the execution and performance of its powers, duties and functions.

(b) To acquire by eminent domain, purchase, lease or otherwise, in the name of the city, all real property or any interest therein necessary for the construction, maintenance, repair, extension or operation of the fixed guideway system; provided, however that prior to commencing such action, the authority shall submit to the council, in writing, a list of the parcels and areas to be acquired. The authority shall have the right to proceed with such condemnation action so long as the council does not adopt a resolution objecting to the condemnation within 45 days of such notification. Alternatively, after receipt of the notice from the authority, the council may approve, upon a single reading of a resolution, such acquisition by eminent domain.

(c) To recommend to the council the sale, exchange or transfer of real property or any interest therein which is under the control of the authority. The council shall take no action to dispose of such property without the written approval of the authority, and all proceeds from the disposition shall be deposited into funds of the authority or fixed guideway system.

(d) To direct the planning, design, and construction of the fixed guideway system and operate and maintain the system thereafter.

(e) To establish all fares, fees, and charges for the fixed guideway system.

(f) To maintain proper accounts in such manner as to show the true and complete financial status of the authority and the results of management and operation thereof.

(g) To prepare annual operating and capital budgets for the fixed guideway system and the authority.

(h) To make and alter policies for its organization and internal administration.

(i) To create or abolish positions within the authority and establish a pay plan for those persons holding positions in the position classification plan in accordance with Section 6-1109 of this charter.

(j) To make temporary transfers of positions between subdivisions of the authority.

(k) To adopt rules in accordance with state law, when necessary, to effectuate its functions and duties.

(l) To enter into agreements with any public agency or private entity as it deems proper, including agreements for the joint use or operation of transit facilities with agencies of the city.

(m) To have full and complete control of all real and personal property used or useful in connection with the fixed guideway system, including all materials, supplies, and equipment.

(n) To promote, create and assist transit oriented development projects near fixed guideway system stations that promote transit ridership, and are consistent with the intent of the adopted community plans and zoning.

(o) To apply for and receive and accept grants of property, money and services and other assistance offered or made available to it by any person, government or entity, which it may use to meet capital or operating expenses and for any other use within the scope of its powers, and to negotiate for the same upon such terms and conditions as the authority may determine to be necessary, convenient or desirable.

(p) In addition to the general powers under this subsection, other general or specific powers may be conferred upon the authority by ordinance, so long as the powers are consistent with this article of the charter.

3. The board shall:

(a) Have the authority to issue revenue bonds under the name of "Honolulu Authority for Rapid Transportation" in accordance with HRS Chapter 49, subject to council approval.

(b) Review, modify as necessary, and adopt annual operating and capital budgets submitted by the executive director of the authority.

(c) Appoint and may remove an executive director, who shall be the chief executive officer of the public transit authority. The qualifications, powers, duties, functions, and compensation of the executive director shall be established by the board.

(d) Evaluate the performance of the executive director at least annually; and submit a report thereon to the mayor and the council.

(e) Review, modify as necessary, and adopt a six-year capital program within six months of the creation of the authority and annually update the six-year capital program, provided that such capital programs shall be submitted by the executive director.

(f) Have the authority to enter into such arrangements and agreements for the joint, coordinated or common use with any other public entity or utility owning or having jurisdiction over rights-of-way, tracks, structures, subways, tunnels, stations, terminals, depots, maintenance facilities, and transit electrical power facilities.

(g) Determine the policy for the planning, construction, operation, maintenance, and expansion of the fixed guideway system. Except for purposes of inquiry or as otherwise provided in this article, neither the board nor its members shall interfere in anyway with the administrative affairs of the authority.

(h) Prescribe and enforce rules and regulations having the force and effect of law to carry out the provisions of this article of the charter.

(i) Submit an annual report to the mayor and council on its activities.

(j) In addition to the general powers under this subsection, other general or specific powers may be conferred by ordinance upon the board, so long as the powers are consistent with this article of the charter.

(Reso. 09-252)

Section 17-104. Powers, Duties and Functions of the Executive Director --

The executive director shall:

(a) Administer all affairs of the authority, including the rules, regulations and standards adopted by the board.

(b) Have at least five years of fixed guideway system experience.

(c) Sign all necessary contracts for the authority, unless otherwise provided by this article.

(d) Recommend to the board the creation or abolishment of positions.

(e) Enforce the collection of fares, tolls, rentals, rates, charges and other fees.

(f) Prepare payrolls and pension rolls.

(g) Maintain proper accounts in such manner as to show the true and complete financial status of the authority and the results of management and operation thereof.

(h) Prepare annual operating and capital budgets.

(i) Prepare and maintain a six-year capital program.

(j) Prescribe rules and regulations as are necessary for the organization and internal management of the authority.

(k) Recommend rules and regulations for adoption by the board.

(l) Request, and accept appropriations from the city, and request and accept grants, loans and gifts from other persons and entities.

(m) Administer programs promoting appropriate developments near transit stations, including compilation of city incentive programs.

(n) Review development projects having significant impact on the operation of the fixed guideway system.

(o) Plan, administer and coordinate programs and projects of the fixed guideway system that are proposed to be funded, wholly or partially, under federal or state law and required to be transmitted to the Oahu metropolitan planning organization.

(p) Attend all meetings of the board unless excused.

(q) In addition to the general powers under this section, other general or specific powers may be conferred upon the executive director by ordinance, so long as the powers are consistent with this article of the charter.

(Reso. 09-252)

Section 17-105. Board of Directors --

1. The board shall:

(a) Be the policy making body of the authority;

(b) Be responsible for establishing policies for the development, operation, and maintenance of the public transit system; and

(c) Perform other duties and functions assigned to it or to the authority by ordinance in accordance with Section 17-103.3(j).

The board shall consist of ten members, nine voting members and one non-voting member. All members shall serve part-time. The board shall be governed by the provisions of Section 13-103 of this charter, except that subsections (b) and (e) shall not apply and as otherwise provided herein.

2. Appointed members. There shall be seven appointed members. The mayor shall appoint three members. The council shall appoint three members. The six appointed and two ex officio voting members shall appoint, by majority vote, a ninth member.

The initial appointments of the seven appointed members shall be as follows: One member from each mayoral or council appointment shall be designated to serve a five-, four-, and three-year term. The ninth member appointed by the voting members shall serve a two-year term.

3. Ex officio members. The state director of transportation and the city director of transportation services shall be ex officio voting members of the board. The director of the

department of planning and permitting shall be the ex officio non-voting member of the board. The ex officio members of the board shall not be subject to any term limit. *(Reso. 09-252)*

Section 17-106. Rates, Revenues and Appropriations --

The board shall fix and adjust reasonable rates and charges for the fixed guideway system so that the revenues derived therefrom, in conjunction with revenues received from the general excise and use tax surcharge, from the federal government, and from the revenue-generating properties of the authority, shall be sufficient or as nearly sufficient as possible, to support the fixed guideway system and the authority. The authority shall submit a line-item appropriation request for each of its proposed operating and capital budgets for the ensuing fiscal year to the council through the office of the mayor by December 1st of each year. The office of the mayor shall submit the authority's line-item appropriation requests without alteration or amendment. The council shall, with or without amendments, approve the authority's appropriation requests. *(Reso. 09-252)*

Section 17-107. Public Hearings --

The board shall hold public hearings prior to fixing and adjusting rates and adopting a proposed budget. *(Reso. 09-252)*

Section 17-108. Receipt and Disbursement of Funds --

The authority shall make its own collections, but all receipts shall be paid daily into the city treasury and maintained in a fund separate and apart from any other funds of the city.

All moneys expended by the authority shall be disbursed with the written approval of the authority according to the procedures prescribed by the director of budget and fiscal services.

The authority shall have management and control over the moneys made available to the authority in the special transit fund established to receive the county surcharge on state tax.

The authority shall have the authority to receive and expend federal funds authorized for the planning, construction, and operation and maintenance of fixed guideway system projects. *(Reso. 09-252)*

Section 17-109. Bond Sales --

All bond sales shall be subject to council approval. At the request of the authority, the council may, by resolution, approve and the director of budget and fiscal services, when so directed by the board, shall sell such bonds for the acquisition, construction, replacement, rehabilitation, approved extensions or completion of the fixed guideway system in accordance with the procedures prescribed by law for such sales. The proceeds from such sales shall be kept by the director of budget and fiscal services in a separate fund to be used only for the purposes for which the bonds are sold. *(Reso. 09-252)*

Section 17-110. Personnel; Purchasing --

1. Subject to the availability of funds and the creation of positions by and authorization from the board, the executive director may hire personnel necessary to perform the duties and functions of the public transit authority.
2. The authority shall be subject to the civil service provisions of this charter.

3. The authority shall be subject to the centralized purchasing and disposal of personal property provisions of this charter.

4. Pensions for officers and employees shall be governed by law. *(Reso. 09-252)*

Section 17-111. Audits --

1. The accounts and financial status of the authority shall be examined annually by a certified public accountant whose services shall be contracted for by the board and whose fees shall be paid as an expense of the authority. The result of such examination shall be reported to the board, the council and the mayor.

2. The authority shall come within the purview of the performance audit conducted by the managing director and such audits as may be required by the council or conducted by the city auditor. *(Reso. 09-252)*

Section 17-112. Legal Counsel --

The corporation counsel of the city shall be the legal adviser of the authority and shall institute and defend, as the board may require, any and all actions involving matters under the jurisdiction of the authority. The corporation counsel may, with the prior approval of the board, compromise, settle or dismiss any claim or litigation, for or against the authority.

The compensation for such legal work shall be as agreed upon by the board and the council and shall be paid from the revenues of the authority.

The authority may employ an attorney to act as its legal adviser and to represent the authority in any litigation to which the authority is a party. *(Reso. 09-252)*

Section 17-113. Service of Process; Claims --

The authority may sue and be sued under the name of the "Honolulu Authority For Rapid Transportation, City and County of Honolulu." Service of process in all matters affecting the authority or any property under its jurisdiction may be made by service upon any member of the board or on the executive director. Any action commenced or prosecuted for the recovery of damages for any injury to persons or property by reason of negligence of the board or of any agents or employees of the authority, shall be commenced and prosecuted against the authority. No action shall be maintained for the recovery of damages unless a written statement verified by oath of claimant, setting forth the nature and items of the claim and the time and place where the alleged injury occurred, has been filed with the authority within two years after the date of sustaining the injury. *(Reso. 09-252)*

Section 17-114. Transit Fund --

There shall be established a special fund into which shall be transferred the county surcharge on state tax and all revenues generated by the fixed guideway system, including interest earned on the deposits and all other receipts dedicated for the fixed guideway system. All moneys collected from the county surcharge on state excise and use tax and received by the city shall be promptly deposited into the special fund. Expenditures from the special fund shall be for the operating or capital costs of the fixed guideway system and for expenses in complying with the Americans with Disabilities Act of 1990 as it may be amended. *(Reso. 09-252)*

Section 17-115. Reserve Funds --

The board may provide for the accumulation of funds for the purpose of financing major replacements, or extensions and additions to the fixed guideway system, the average estimated annual increment to which, for a period of ten years, shall not exceed fifteen percent of the gross revenues of the fixed guideway system of the authority in any fiscal year. *(Reso. 09-252)*

Section 17-116. Performance Bonds --

The board may require an individual or blanket bond in such amount as it shall deem proper for any or all employees, which bond shall be duly conditioned for the faithful performance of duties, and the board may provide that the premium on the bond be paid out of the revenues of the authority. *(Reso. 09-252)*

Section 17-117. Personnel --

The mayor may transfer a civil service position existing on July 1, 2011 within any department to the authority, if the position is necessary for the administration or operation of the authority or the performance of another duty or function assigned to the authority. The civil service employee holding a permanent appointment in a position that is to be transferred shall suffer no loss of vacation allowance, sick leave, service credits, retirement benefits, or other rights and privileges because of the transfer. Nothing in this section, however, shall be construed as preventing future changes in status pursuant to the civil service provisions of this charter. *(Reso. 09-252)*

Section 17-118. Standards of Conduct --

Article XI of the charter shall be applicable to the authority. *(Reso. 09-252)*

Section 17-119. Fixed Guideway Alignments, Extensions and Additions --

The authority shall adhere to the fixed guideway system alignment of the locally preferred alternative approved by the council. Any new alignment, extension or addition to the fixed guideway system alignment shall be subject to council approval by ordinance, except that any adjustment of the alignment necessitated by the impact mitigation shall not constitute a new alignment for purposes of this section. *(Reso. 09-252)*

Section 17-120. Applicability of Charter Provisions --

Except as otherwise provided, no provision of this charter, other than those set forth in this article of the charter, shall be applicable to the authority. *(Reso. 09-252)*

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