

**Chapter 1**

**GENERAL PROVISIONS**

**Articles:**

- 1. **Title of Volume**
- 2. **Construction of Ordinances**
- 3. **Penalties and Interest**
- 4. **Definitions**
- 5. **Repeal of Resolutions or Ordinances**
- 6. **Severability**
- 7. **Continuity in Government**
- 8. **Intergovernmental Agreements and Private Grant Agreements**
- 9. **Authority of Executive Agency to Adopt Rules and Regulations**
- 10. **Limitation of Service on County Boards and Commissions**
- 11. **Nondiscrimination Policy**
- 12. **Purchase of Recycled Paper Products**
- 13. **Seal and Motto of the Department of the Prosecuting Attorney**
- 14. **Personal Names on Signs Relating to Public Projects and Governmental Activities**
- 15. **Ordinance Revision (Repealed by Ord. 95-45)**
- 16. **Reserved**
- 17. **Codification of Ordinances**
- 18. **Sexual Harassment Policy for City Officer or Employee**
- 19. **Sexual Harassment Policy for Employer Having a Contract with the City**
- 20. **Addition of Unpaid Civil Fines to Taxes, Fees, or Charges Collected by the City**
- 21. **Drug and Alcohol Abuse Training Program**
- 22. **City Advertisements**
- 23. **Hawaiian Language Signs of the City and County of Honolulu**

**Article 1. Title of Volume**

**Sections:**

- 1-1.1 **Title.**

**Sec. 1-1.1 Title.**

This volume shall be known as "the Revised Ordinances of the City and County of Honolulu 1990," and its official abbreviated designation shall be "ROH 1990." (Sec. 1-1.1, R.O. 1978 (1983 Ed.))

**Article 2. Construction of Ordinances**

**Sections:**

- 1-2.1 **Construction.**
- 1-2.2 **When construction shall apply.**
- 1-2.3 **Reference to articles, chapters or sections—Conflicting provisions.**
- 1-2.4 **Passage of ordinances.**
- 1-2.5 **Adoption of resolutions.**

**Sec. 1-2.1 Construction.**

In the construction of ordinances, resolutions having the effect of law, or rules and regulations having the effect of law, the following rules shall be observed unless it shall be apparent from the context that a different construction is intended:

- (a) **General Rule.** All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.
- (b) **Construction of Ambiguous Words.** Where the words are ambiguous:
  - (1) The meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.
  - (2) The reason and spirit of the ordinance, resolution, rules and regulations, and the cause which induced enactment or promulgation may be considered to discover its true meaning.
  - (3) Every construction which leads to an absurdity shall be rejected.
- (c) **Ordinances in Pari Materia.** Ordinances in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one ordinance may be called in aid to explain what is doubtful in another.
- (d) **Number and Gender.** Words in the masculine gender signify both the masculine and feminine gender, those in the singular or plural number signify both the singular and plural number, and words importing adults include youths or children.
- (e) **Tenses.** Every word used in the present tense shall include the future.
- (f) **Acts by Subordinate Officer.** When any provision herein requires an act to be done, which may by law as well be done by a subordinate officer as by the superior officer, such requirement shall be construed to include all such acts when done by an authorized subordinate officer.

- (g) Ordinance, Resolution, or Rules and Regulations Not Retrospective. No ordinance, resolution, or rules and regulations has any retrospective operation, unless otherwise expressed or obviously intended.
  - (h) Persons and Property Subject to Ordinance, Resolution, or Rules and Regulations. The ordinances, resolutions, and rules and regulations are obligatory upon all persons and property within the jurisdiction of the city.
  - (i) Prohibitory Ordinance -- Effect. Whatever is done in contravention of a prohibitory ordinance is void, although the nullity be not formally directed.
  - (j) References Apply to Amendments. Whenever reference is made to any portion of the revised ordinances or of any other law of the city or state, the reference applies to all amendments thereto.
  - (k) References Inclusive. Whenever reference is made to a series of sections in the revised ordinances by citing only the numbers of the first and last sections connected by the word "to," the reference includes both the first and last sections.
  - (l) Citations of Ordinance or Resolution Included in Supplements. Any act of the council may be cited in any subsequent enactment of ordinances or in any other proceeding by reference to the chapter or section numbers as set forth in the supplement published pursuant to Section 3-205 of the city charter.
  - (m) Service of Notice by Mail. Whenever an ordinance provides for the giving of notice or service of legal process by registered mail, the sending of such notice or service of such legal process may be made by means of certified mail, return receipt requested and deliver to addressee only.
  - (n) Computation of Time. The time, in which any act is to be done, is computed by excluding the first day and including the last, unless the last day is a Sunday or holiday and then it is also excluded. When so provided by the rules of court, the last day also shall be excluded if it is a Saturday.
  - (o) Acts To Be Done on Holidays. Whenever any act of a secular nature other than a work of necessity or mercy is appointed by law or contract to be performed upon a particular day, which day falls upon a Saturday, Sunday or holiday, the act may be performed upon the next business day with the same effect as if it had been performed upon the appointed day.
- (Sec. 1-2.1, R.O. 1978 (1983 Ed.))

**Sec. 1-2.2 When construction shall apply.**

- (a) All provisions of this article relating to construction of ordinances, resolutions, and rules and regulations shall apply not merely to those now in force but to all hereafter enacted, unless otherwise expressed or obviously intended.
  - (b) The rules of construction set forth in Section 1-2.1 shall not be applied to any provision of the revised ordinances which shall contain any express provision excluding such construction, or when the subject matter or context of a provision of the revised ordinances may be repugnant thereto.
- (Sec. 1-2.2, R.O. 1978 (1983 Ed.))

**Sec. 1-2.3 Reference to articles, chapters or sections--Conflicting provisions.**

In addition to the rules of construction specified in Section 1-2.1, the following rules shall be observed in the construction of the provisions of the revised ordinances:

- (a) All references to chapters, articles or sections are to the chapters, articles and sections of the revised ordinances unless otherwise specified.
  - (b) If the provisions of different chapters of the revised ordinances conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.
  - (c) If conflicting provisions are found in different sections of the same chapter the provisions of the section which are enacted later in time shall prevail unless such construction is inconsistent with the meaning of such chapter.
- (Sec. 1-2.3, R.O. 1978 (1983 Ed.))

**Sec. 1-2.4 Passage of ordinances.**

No ordinance shall be passed except by a bill which must pass three readings on separate days and within two years of its introduction. If a bill fails to pass third reading within the two year period, it shall be deemed filed. (Sec. 1-2.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-58)

**Sec. 1-2.5 Adoption of resolutions.**

Except as otherwise provided in this section, a resolution requiring one reading for adoption shall be deemed filed if it fails to be adopted by the council within one year of its date of introduction. Any resolution requiring three readings on separate days for adoption shall be deemed filed if it fails to be adopted by the council within two years of its date of introduction. (Added by Ord. 89-29)

**Article 3. Penalties and Interest**

**Sections:**

- 1-3.1 Where no penalty provided.**
- 1-3.2 Refusal to provide identification.**
- 1-3.3 Interest on debts owed the city.**

**Sec. 1-3.1 Where no penalty provided.**

In any case where there shall be a violation of any of the provisions of the charter or ordinances or rules and regulations for which no criminal penalty or sanction is provided, the person violating the same, upon conviction, shall be subject to a fine of not more than \$1,000.00 for each offense or by imprisonment of not more than one year, or to both such fine and imprisonment; provided, that if such offense by the same person shall continue after due notice each day's continuance of the same shall constitute a separate offense. (Sec. 1-3.1, R.O. 1978 (1983 Ed.))

**Sec. 1-3.2 Refusal to provide identification.**

In any case where the revised ordinances provide for the issuance of a summons or citation, a person so summoned or cited shall not wilfully refuse to provide such person's name, address and any proof thereof upon the lawful order or direction of any police officer, or other officer lawfully empowered to issue said summons or citation, in the course and scope of the officer's duties pursuant to said ordinances. (Sec. 1-3.3, R.O. 1978 (1983 Ed.))

**Sec. 1-3.3 Interest on debts owed the city.**

- (a) In any case where existing ordinances do not provide for interest to be charged against a debt owed to the city, interest at the rate of one percent for each month or fraction thereof shall be assessed against the outstanding debt, beginning 30 days after the date of the bill.
- (b) For the purposes of this section, "debt" includes any loan, fee, charge, or other liquidated sum which is past due to the city, regardless of whether there is an outstanding judgment for that sum, and whether the sum has accrued through contract, subrogation, tort, operation of law, or judicial or administrative judgment or order.

(Added by Ord. 94-50)

**Article 4. Definitions**

**Sections:**

**1-4.1 Words.**

**Sec. 1-4.1 Words.**

For the purposes of the revised ordinances the following words and their derivations shall have the meaning given herein, unless it shall be apparent from the context that a different meaning was intended:

"Agency" means any office, department, board, commission or other governmental unit of the city.

"Charter" means the Revised Charter of the City and County of Honolulu.

"City" means the City and County of Honolulu.

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

"County" means and includes the City and County of Honolulu.

"Employee" means any person, except an officer, employed by the city or any agency thereof but shall not include an independent contractor.

"Executive agency" means any agency of the executive branch of the city government, excluding the board of water supply.

"Month" means a calendar month; and the word "year" a calendar year.

"Oath" means and includes a solemn affirmation.

"Officer" means and includes the following:

- (1) Mayor, members of the council, managing director, budget director and the director of information and complaint;
- (2) Any person appointed as administrative head of any agency of the city or as a member of any board or commission provided for in the charter;
- (3) Any person appointed by a board or commission as the administrative head of such agency;
- (4) The first deputy or a division chief appointed by the administrative head of any agency of the city;
- (5) Deputies of the corporation counsel and the prosecuting attorney.

"Or" and "and" may be construed to mean the other.

"Person," or words importing persons, for instance, "another," "others," "any," "anyone," "anybody" and the like, signify not only individuals, but corporations, firms, associations, societies, communities, assemblies, inhabitants of a district, or neighborhood, or persons known or unknown, and the public generally, where it appears, from the subject matter, the sense and connection in which such words are used, that such construction is intended. (Sec. 1-4.1, R.O. 1978 (1983 Ed.))

**Article 5. Repeal of Resolutions or Ordinances**

**Sections:**

- 1-5.1 Repeal of ordinances.**
- 1-5.2 Repeal of resolutions.**
- 1-5.3 No revivor on repeal--Exception.**
- 1-5.4 Express or implied repeal.**
- 1-5.5 Effect of repeal on accrued rights.**
- 1-5.6 Effect of repeal on pending suit or prosecution.**

**Sec. 1-5.1 Repeal of ordinances.**

Ordinances may be repealed either entirely or partially by other ordinances. (Sec. 1-5.1, R.O. 1978 (1983 Ed.))

**Sec. 1-5.2 Repeal of resolutions.**

Resolutions may be repealed either entirely or partially by other resolutions. (Sec. 1-5.2, R.O. 1978 (1983 Ed.))

**Sec. 1-5.3 No revivor on repeal--Exception.**

The repeal of any resolution or ordinance shall not be construed to revive any other resolution or ordinance which has been repealed, unless it is clearly expressed. (Sec. 1-5.3, R.O. 1978 (1983 Ed.))

**Sec. 1-5.4 Express or implied repeal.**

The repeal of a resolution or ordinance is either express or implied. It is express when it is literally declared by a subsequent resolution or ordinance. It is implied when the new resolution or ordinance contains provisions contrary to, or irreconcilable with, those of the former resolution or ordinance. (Sec. 1-5.4, R.O. 1978 (1983 Ed.))

**Sec. 1-5.5 Effect of repeal on accrued rights.**

The repeal of any resolution or ordinance shall in no case affect any act done, or any right accruing, accrued, acquired, or established, or any suit or proceedings had or commenced in any civil case, before the time when the repeal takes effect. (Sec. 1-5.5, R.O. 1978 (1983 Ed.))

**Sec. 1-5.6 Effect of repeal on pending suit or prosecution.**

No suit or prosecution pending at the time of the repeal of any resolution or ordinance, for any offense committed, or for the recovery of any penalty or forfeiture incurred under the resolution or ordinance so repealed, shall in any case be affected by such repeal. (Sec. 1-5.6, R.O. 1978 (1983 Ed.))

**Article 6. Severability**

**Sections:**

**1-6.1 General provisions.**

**Sec. 1-6.1 General provisions.**

If any provision of the revised ordinances, or the application thereof to any person or circumstances, is held invalid, the remainder of the revised ordinances, or the application of the provision to other persons or circumstances, shall not be affected thereby. (Sec. 1-6.1, R.O. 1978 (1983 Ed.))

**Article 7. Continuity in Government**

**Sections:**

- 1-7.1 Purpose.**
- 1-7.2 Definitions.**
- 1-7.3 Determination as to unavailability.**
- 1-7.4 Succession to office of mayor.**
- 1-7.5 Succession to office of councilmember.**
- 1-7.6 Succession to office of chair or vice chair.**
- 1-7.7 Term of office.**
- 1-7.8 Effect of succession to office.**
- 1-7.9 Standby officers—Compensation.**
- 1-7.10 Absence of the mayor.**

**Sec. 1-7.1 Purpose.**

The purpose of this article is to provide for an order of succession and the designation of standby officers to the offices of the mayor and councilmembers in the event of any vacancy in such offices, or in the event of unavailability of any councilmember, resulting from a civil defense emergency. (Sec. 1-8.1, R.O. 1978 (1983 Ed.))

**Sec. 1-7.2 Definitions.**

"Civil defense emergency" means any disaster or emergency of great destructiveness resulting from enemy attack, sabotage or other hostile action, upon the basis of which the existence of a state of civil defense emergency is proclaimed.

"Standby officers" means persons who shall function with all the powers, responsibilities and duties of the office for which they have been designated in the event of the unavailability of the officers for whom they stand by, during a period of a civil defense emergency as in this article provided. (Sec. 1-8.2, R.O. 1978 (1983 Ed.))

**Sec. 1-7.3 Determination as to unavailability.**

The determination as to whether a particular officer is unavailable during a civil defense emergency period shall be made by the city council or the remaining available members of the council. (Sec. 1-8.3, R.O. 1978 (1983 Ed.))

**Sec. 1-7.4 Succession to office of mayor.**

- (a) In the event that the office of the mayor becomes vacant during a civil defense emergency period, the vacancy shall be filled as provided by Section 5-106 of the city charter.
- (b) If the vacancy referred to in subsection (a) of this section cannot be filled in conformity with the provisions of Section 5 106 of the city charter, the following shall serve as standby officers for the office of mayor in the order of succession set forth hereinbelow:
  - (1) The chair of the city council.
  - (2) The vice chair of the city council.
  - (3) Councilmembers at large in the order of the longest continuous tenure; provided, that if there are two or more councilmembers with equal length of tenure, then the councilmember polling the larger number of votes in the preceding general election shall be prior in the order of succession.

- (4) District councilmembers in the order of the longest continuous tenure; provided, that if there are two or more district councilmembers with equal length of tenure, then the councilmember polling the larger number of votes in the preceding general election shall be prior in the order of succession.
  - (5) The managing director.
- (c) Pending the assumption of office by any councilmember as hereinabove provided, or in case of a temporary absence from the state, or temporary disability or unavailability of the mayor, the managing director shall act as mayor. If the managing director should resign or be unable to act, the budget director shall then act as mayor.
- (Sec. 1-8.4, R.O. 1978 (1983 Ed.))

**Sec. 1-7.5 Succession to office of councilmember.**

- (a) In the event that a vacancy occurs in the office of a councilmember during a civil defense emergency period, the vacancy shall be filled as provided by Section 3-105 of the city charter.
  - (b) In the event that the vacancy referred to in subsection (a) cannot be filled in the manner prescribed therein, the remaining members of the council shall appoint a successor possessing the requisite qualifications to fill the vacancy.
  - (c) If the provisions of subsections (a) and (b) of this section cannot be complied with within seven calendar days after the occurrence of a civil defense emergency, the mayor shall appoint the successor to the office of any councilmember which is vacant or for which a councilmember is otherwise unavailable; provided, that any person so appointed shall have the requisite qualifications specified by Section 3-104 of the city charter.
- (Sec. 1-8.5, R.O. 1978 (1983 Ed.))

**Sec. 1-7.6 Succession to office of chair or vice chair.**

- (a) In the event of a vacancy in the office of chair or vice chair of the council, the council shall elect one of its members as the successor to such office as provided by Section 3-105 of the city charter.
  - (b) In the event that both the chair and vice chair are unavailable during a civil defense emergency period, the council shall appoint a presiding officer pro tempore from its membership.
- (Sec. 1-8.6, R.O. 1978 (1983 Ed.))

**Sec. 1-7.7 Term of office.**

- (a) Any person who assumes the office of mayor or of a councilmember due to a vacancy in such office shall continue in office for the unexpired term, if such unexpired term is for less than one year. If the unexpired term is for one year or more, such person shall continue in office until a successor is chosen pursuant to the provisions of the city charter; provided, that if the existence of the civil defense emergency prevents compliance with the provisions of said city charter, the person filling the vacancy shall continue in office until a successor has been chosen as provided by law.
  - (b) Any person who assumes the office of a councilmember during a civil defense emergency period, other than to fill a vacancy, shall continue in office until the original incumbent becomes available or, if the original incumbent remains unavailable, then for the duration of the civil defense emergency period and thereafter, until a successor has been chosen as provided by Section 3-105 of the city charter.
- (Sec. 1-8.7, R.O. 1978 (1983 Ed.))

**Sec. 1-7.8 Effect of succession to office.**

In the event that any councilmember or the managing director assumes the office of mayor because of a vacancy in the office of the mayor, then a vacancy shall exist in the office of councilmember or the managing director, as the case may be. (Sec. 1-8.8, R.O. 1978 (1983 Ed.))

**Sec. 1-7.9 Standby officers--Compensation.**

- (a) Persons designated as standby officers for the mayor or councilmembers shall receive no compensation for such designation as standby officers.
  - (b) In the event of a vacancy in any such office, the person filling the vacancy shall be entitled to the compensation attaching to such office.
  - (c) In the event any person assumes the office of a councilmember during a civil defense emergency, other than to fill a vacancy, such person shall be entitled to compensation, as may be provided by ordinance, while performing the duties and functions of such office.
- (Sec. 1-8.9, R.O. 1978 (1983 Ed.))

**Sec. 1-7.10 Absence of the mayor.**

- (a) Consistent with the provisions of Section 5-106.2 of the Revised Charter, the mayor shall provide written notice to the council and file said notice with the city clerk prior to any anticipated absence from the city. The notice shall provide the date of the mayor's anticipated departure from the city, the date of the mayor's anticipated return to the city, and the name of the city officer who will be acting as mayor during the mayor's anticipated absence.
  - (b) If the mayor must be absent from the city due to an unanticipated emergency, the mayor or the mayor's designee shall provide the notice to the council and file said notice with the city clerk as soon as is practicable after the mayor's departure, stating the date on which the mayor departed from the city, the date of the mayor's anticipated return to the city, and the name of the city officer who is acting as mayor during the mayor's absence.
- (Added by Ord. 04-41)

**Article 8. Intergovernmental Agreements and Private Grant Agreements**

**Sections:**

- 1-8.1 Definition.**
- 1-8.2 Council approval of agreements.**
- 1-8.3 Approval of consolidated plan and annual action plans.**
- 1-8.4 Penalties.**
- 1-8.5 Separability.**

**Sec. 1-8.1 Definition.**

For purposes of this article, the following terms shall have the meaning given herein.

“Agreement” means an intergovernmental agreement or a private grant agreement.

“Annual Action Plan” means an annual application for funding under the HUD CPD formula grant for the CDBG, HOME, ESG and HOPWA programs. The Annual Action Plan is submitted to HUD on a yearly basis and identifies projects and activities for HUD review and approval.

“CDBG” means HUD’s Community Development Block Grant program and any successor program.

“Conditional Gift” means any voluntary contribution of money, securities, other personal property, or of real estate or any interest in real estate to the city for a public purpose, which imposes an obligation on the city.

“Consolidated Plan” means a three- or five-year plan prepared in accordance with HUD CPD requirements submitted to HUD that serves as a planning document which describes needs, resources, priorities and proposed activities to be undertaken with respect to CDBG, HOME, ESG and HOPWA programs.

“CPD” means the Community Planning and Development programs of HUD.

“ESG” means HUD’s Emergency Shelter Grants program and any successor program.

“HOME” means HUD’s HOME Investment Partnership program and any successor program.

“HOPWA” means HUD’s Housing Opportunities for Persons With AIDS program and any successor program.

“HUD” means the United States Department of Housing and Urban Development.

“Intergovernmental agreement” means any instrument in the nature of a contract, compact, memorandum of understanding or agreement which is intended to be executed between the city and either the federal government, the state government, the government of any other state, any political subdivision of any state, any combination thereof or with a quasi governmental agency.

“Intergovernmental agreement” also includes any arrangement between the city and a governmental entity listed above, or between the city and a nongovernmental entity under contract with a governmental agency listed above, to provide training to city personnel, alone or in combination with travel and lodging for the city personnel to participate in the training. To be deemed an “intergovernmental agreement,” such an arrangement need not be formalized in a contract, compact, memorandum of understanding, or agreement that is executed between the city and governmental entity.

“Obligation” means any commitment, promise or similar representation contained in an agreement that the city or any agency thereof will provide either funds, documents, statistical data, or any professional or technical services to another party, send personnel to training provided by another party, or to expend city funds as required by that party. An “obligation” does not include the duty to acknowledge a gift, or to report to the donor on the use of a gift.

“Private grant agreement” means any instrument in the nature of a contract, compact, memorandum of understanding or agreement which is intended to be executed between the city and a private party where the private party agrees to furnish assistance, financial or otherwise, to support a city program or function in exchange for the city incurring an obligation. To be deemed a “private grant agreement,” such assistance shall be valued at \$2,500 or more. The term includes a conditional gift or an agreement providing for a private party to provide training to city personnel, alone or in combination with travel and lodging for the city personnel to participate in the training, provided the gift or agreement meets all of the elements of this definition. To be deemed a “private grant agreement,” such an arrangement need not be formalized in a contract, compact, memorandum of understanding, or agreement that is executed between the city and private party. “Private grant agreement” shall not include any procurement or procurement contract as defined by the provisions of the Hawaii Public Procurement Code, or that relates to any grant of funds subject to the provisions of Chapter 6, Article 9.

“Private party” means a person or entity who is neither an officer or employee of any governmental or quasi-governmental body nor a governmental or quasi-governmental body.

“Project” means a CPD-funded activity in which an applicant requests CPD funding assistance. The term does not include the portion of CPD funding set aside for program administration and planning. (Sec. 1-9.1, R.O. 1978 (1983 Ed.); Am. Ord. 05-040, 06-14, 08-33, 11-18)

**Sec. 1-8.2 Council approval of agreements.**

- (a) Except for those exempted under subsections (b), (c), or (d), any agreement, or any amendments thereto, which place an obligation upon the city or any department or agency thereof shall require prior city council's consent and approval. The final or draft version of the agreement shall be provided to the council for its review prior to the council's approval. In the event a draft agreement is provided, if a material change is made to the draft agreement after council approval, such change shall require additional council review and approval. City council's consent and authorization as well as the designated official authorized to execute the agreement on behalf of the City and County of Honolulu shall be contained in the form of either an ordinance or resolution.

When carrying out the provisions of any agreement entered into in accordance with this subsection, all applications and/or amendments thereof, statistical data programs, reports or other official communications which support the application and which are required to be provided by the city or its component departments shall first be presented to the city council for its review and approval prior to its transmittal. Council's consent and authorization shall be through adoption of an appropriate resolution.

- (b) In lieu of the requirements of subsection (a), the following departments shall submit an annual report to the council by September 30 detailing all agreements placing obligations upon them that were entered into or utilized during the previous fiscal year:

- (1) Department of emergency services;
- (2) Honolulu fire department;
- (3) Department of emergency management;

- (4) Department of the medical examiner;
- (5) Honolulu police department; and
- (6) Department of the prosecuting attorney.

- The agreements subject to this subsection shall be deemed approved by the council unless such report is not submitted.
- (c) In lieu of the requirements of subsection (a), an agreement that, according to written certification by the mayor or the mayor's designee, will not be executed until approved, does not require the expenditure of city funds, and for which the city has not already accepted funds, shall be deemed approved 15 days after being filed with the city clerk and distributed to all members of the city council, unless a councilmember files a written objection with the city clerk prior to the 15th day. An agreement that has been objected to shall not be eligible for approval under this subsection. The agreement or the submittal to the city clerk shall identify the city official to be authorized to execute the agreement. Approval of the agreement shall authorize the designated city official to execute the agreement in substantially the form filed, as well as any related agreements and amendments that also do not require the expenditure of city funds and shall authorize the designated city official to receive and expend funds provided pursuant to the agreement. An annual report shall be submitted by the managing director or the managing director's designee to the council by September 30 detailing all agreements that have been deemed approved under this subsection and executed or utilized during the previous fiscal year.
- (d) Agreements for the rental of a facility for the purpose of holding a public meeting or a public hearing shall be exempted from the requirements of this section.

(Sec. 1-9.2, R.O. 1978 (1983 Ed.); Am. Ord. 06-14, 07-40, 08-24, 11-2, 11-18)

**Sec. 1-8.3 Approval of consolidated plan and annual action plans.**

- (a) Any Consolidated Plan or Annual Action Plan prepared by a city agency relating to CPD formula entitlement monies shall be submitted to council for its review and approval a minimum of 90 days prior to its HUD-required transmittal date. Council shall review and approve the Consolidated Plan and/or Annual Action Plan no later than 45 days prior to the HUD-required plan transmittal date to allow city compliance with HUD's 30-day public notice and comment period for the Consolidated Plan and/or Annual Action Plan. The council may approve the Consolidated Plan and/or Annual Action Plan by resolution.
- (b) Amendments to the Consolidated Plan and Annual Action Plan will not be subject to the 90- and 45-day transmittal and approval periods, but rather can be transmitted to HUD at anytime per HUD regulations subject to council approval.
- (Added by Ord. 05-040)

**Sec. 1-8.4 Penalties.**

Penalty for violations of any provision of this article shall be a fine not to exceed \$1,000.00 or one year's imprisonment, or both. Prosecutions in such cases shall be as provided by law for the prosecution of misdemeanors. (Sec. 1-9.3, R.O. 1978 (1983 Ed.); Am. Ord. 05-040)

**Sec. 1-8.5 Separability.**

It is the intention of the council that this article and every provision thereof shall be considered separable, and the invalidity of any section, clause, provision or part thereof, shall not affect the validity of any other portion of this article. (Sec. 1-9.4, R.O. 1978 (1983 Ed.); Am. Ord. 05-040)

**Article 9. Authority of Executive Agency to Adopt Rules and Regulations**

**Sections:**

- 1-9.1 Adoption of rules and regulations.**
- 1-9.2 Format of rules and regulations.**

**Sec. 1-9.1 Adoption of rules and regulations.**

The head of any executive agency whose power or function as prescribed by law directly affects the public, may promulgate rules and regulations having force and effect of law pursuant to HRS Chapter 91, setting forth procedures that are necessary for such agency in dealing with the public concerning such power or function. (Sec. 1-10.1, R.O. 1978 (1983 Ed.))

**Sec. 1-9.2 Format of rules and regulations.**

- (a) The department of the corporation counsel shall prescribe a uniform format for the preparation and publication of rules and regulations of departments and agencies of the city. The uniform format shall provide that each rule or regulation published shall be accompanied by a reference to the authority pursuant to which the rule or regulation has been adopted, the law implemented by the rule or regulation, if any, and the effective date of the rule or regulation. The uniform format shall further provide that whenever possible, applicable law should be incorporated by reference and not be reprinted in the rule or regulation.
- (b) Until such time as a uniform format is established pursuant to subsection (a), the rules and regulations of the city shall be prepared and published in the form prescribed in the Hawaii Administrative Rules Drafting Manual, provided that references therein to the Hawaii Revised Statutes shall be deemed references to the revised ordinances of Honolulu, when appropriate, and other such adjustments shall be made as necessary to give such drafting manual a reasonable interpretation when applied to the City and County of Honolulu.
- (Sec. 1-10.2, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Article 10. Limitation of Service on County Boards and Commissions**

**Sections:**

**1 10.1 Limitation.**

**Sec. 1-10.1 Limitation.**

Any other provision of law to the contrary notwithstanding, no person shall be allowed to serve on more than one county board or commission expressly created by state or county law; provided, however, that this provision shall not apply to prohibit county officers and employees from serving on more than one county board or commission when such service is required by the charter of the City and County of Honolulu or the revised ordinances of Honolulu. (Sec. 1-11.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

**Article 11. Nondiscrimination Policy**

**Sections:**

**1-11.1 Definitions.**

**1-11.2 City employment practices--Provision of city services.**

**Sec. 1-11.1 Definitions.**

As used in this article:

"Discriminatory practices" means practices that discriminate on the basis of race, sex, sexual orientation, age, religion, color, ancestry, handicapped status, marital status, or arrest and court record.

"Nonability based criteria" means criteria not substantially related to the ability of an individual to perform competently the duties of a position. (Added by Ord. 88-16)

**Sec. 1-11.2 City employment practices--Provision of city services.**

The City and County of Honolulu shall refrain from discriminatory practices in city employment, including any practice that discriminates on the basis of nonability based criteria. Further, the City and County of Honolulu shall refrain from discriminatory practices in the provision of city services. (Added by Ord. 88-16)

**Article 12. Purchase of Recycled Paper Products**

**Sections:**

**1-12.1 Definitions.**

**(1-12.2 Preference for recycled paper products, other than recycled office paper. Repealed by Ord. 94-62.)**

**1-12.2 Reserved.**

**1-12.3 Required procurement of recycled paper products.**

**Sec. 1-12.1 Definitions.**

For the purpose of this article:

"City" includes both the executive and legislative branches of the City and County of Honolulu.

"Nonrecycled paper product" means a paper product which is not a recycled paper product.

"Paper product" means a paper or wood pulp product comprised of sheets or individual units, each of which is intended to be used for printing, writing, drawing, sanitation, or hygiene, including, but not limited to, bond paper, computer paper, ledger paper, printing paper, copy machine paper, preprinted forms, writing pads, stick-on notes, file folders, boxes, paper towels, and toilet tissue. "Paper product" does not include a book, pamphlet, newspaper, or periodical intended solely or primarily for reading.

"Recycled paper product" means a paper product, each sheet or individual unit of which conforms to the definitions and specifications of the Paper Products Recovered Materials Advisory Notice, as developed and updated by the United States Environmental Protection Agency.

(Added by Ord. 89-116; Am. Ord. 93-53, 94-62, 00-01)

**(Sec. 1-12.2 Preference for recycled paper products, other than recycled office paper. Repealed by Ord. 94-62.)**

**Sec. 1-12.2 Reserved.**

**Sec. 1-12.3 Required procurement of recycled paper products.**

(a) Except as otherwise provided under subsection (b), when procuring a paper product, the city shall procure only a recycled paper product.

The specifications for any procurement by the city of a paper product shall conform to and implement this section.

(b) The city may procure a type and quantity of nonrecycled paper product under the following circumstances:

- (1) A recycled paper product of the same type and quantity as the nonrecycled paper product is unavailable in Honolulu or cannot be supplied from elsewhere within 30 days of placement of a purchase order;
- (2) Legal considerations prevent the procurement of a recycled paper product of the same type and quantity as the nonrecycled paper product; and
- (3) A recycled paper product of the same type and quantity as the nonrecycled paper product is at least 25 percent more expensive than the nonrecycled paper product. For the purpose of this exception, the price of a type and quantity of nonrecycled paper product shall be ascertained by the following:
  - (A) Examination of a price schedule maintained by the city; or

- (B) If not included in a price schedule, an informal request for a price from at least one supplier selling the type of nonrecycled paper product in Honolulu. If, however, no supplier sells the type of nonrecycled paper product in Honolulu, an informal request for a price shall not be necessary.

For the purpose of this subsection, a recycled paper product and nonrecycled paper product shall be deemed the "same type" when both have the same intended use, dimensions, weight, color, and, if applicable, lining, glossiness, and inscription.

(Added by Ord. 93-53; Am. Ord. 94-62)

### Article 13. Seal and Motto of the Department of the Prosecuting Attorney

#### Sections:

- 1-13.1 Seal and motto.**  
**1-13.2 Filing with city clerk.**

#### Sec. 1-13.1 Seal and motto.

The prosecuting attorney is authorized to formulate and adopt a departmental seal and motto to be displayed on the official badges issued to its investigators and to be used for other official purposes as the prosecuting attorney deems appropriate. (Added by Ord. 90-9)

#### Sec. 1-13.2 Filing with city clerk.

A copy of the seal and motto adopted by the prosecuting attorney shall be filed in the office of the city clerk. (Added by Ord. 90-9)

### Article 14. Personal Names on Signs Relating to Public Projects and Governmental Activities

#### Sections:

- 1-14.1 Definitions.**  
**1-14.2 Signs relating to public projects and governmental activities.**  
**1-14.3 Enforcement.**  
**1-14.4 Penalty.**

#### Sec. 1-14.1 Definitions.

As used in this article, the following words and terms shall have the following meanings, unless the context indicates a different meaning or intent:

"Governmental activity" means:

- (1) A public hearing, meeting or other activity of the city or any agency thereof which is subject to HRS Chapter 91 or Chapter 92; and
- (2) A hearing, meeting or other activity of the city or any agency thereof not subject to HRS Chapter 91 or Chapter 92, for which notice to the general public is actually provided, such as a workshop or informational meeting.

"Officer or employee" means an officer or employee as defined under Section 1-4.1 or a member of a city board or commission which is created by law or ordinance.

"Public project" means an activity which the city operates, participates in with another person or governmental agency, endorses, sponsors or provides, partially or totally, funding, labor or materials. "Public project" includes a project involving general construction, public improvement, housing, street or sidewalk improvement, or beautification.

"Sign" means a sign as defined under Section 21-7.20 which:

- (1) Indicates participation by the city in the public project described on the sign; or
- (2) Intends to notify the public of a governmental activity.

"Sign" includes a "public sign" as defined in Section 21-7.20. (Added by Ord. 91-30)

#### Sec. 1-14.2 Signs relating to public projects and governmental activities.

A sign relating to a public project or governmental activity:

- (a) Shall display only the name of the agency responsible for the public project or governmental activity, the name of the City and County of Honolulu, or both; and
- (b) Shall not be signed by or indicate the personal name of any officer or employee, unless the display on the sign of the personal name of a particular officer or employee is required by law, ordinance or rule or is a condition for the receipt of state or federal funds.

(Added by Ord. 91-30)

#### Sec. 1-14.3 Enforcement.

- (a) The circuit courts of the state shall have jurisdiction to enforce this article by injunction or other appropriate remedy.
- (b) Any person may commence a suit in a circuit court for the purpose of requiring compliance with or preventing violations of this article or to determine the applicability of this article to a specific sign or notice. The court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this article.

(Added by Ord. 91-30)

#### Sec. 1-14.4 Penalty.

Any person who wilfully violates any provision of this article shall be guilty of a misdemeanor. (Added by Ord. 91-30)

(Article 15. Ordinance Revision. Repealed by Ord. 95-45)

Article 15. Reserved

Article 16. Codification of Ordinances

Sections:

- 1-16.1 Revisor of ordinances.
- 1-16.2 Contracting for the preparation of the Revised Ordinances of Honolulu.
- 1-16.3 Ordinance revision.

Sec. 1-16.1 Revisor of ordinances.

The office of council services shall be the revisor of ordinances of the city. As the revisor of ordinances, the office of council services shall have direct supervision over the contractor's performance under any contract entered into pursuant to Section 1-16.2, subject to the oversight of the council. (Added by Ord. 93-26)

Sec. 1-16.2 Contracting for the preparation of the Revised Ordinances of Honolulu.

The presiding officer of the council or the presiding officer's designated representative shall be authorized to contract for the revision, codification and printing of the ordinances of the city which are appropriate for continuation as law. Such codification shall be known as the "Revised Ordinances of Honolulu." (Added by Ord. 93-26)

Sec. 1-16.3 Ordinance revision.

- (a) In preparing any amendment to, revision of, or supplement to the Revised Ordinances of Honolulu, the revisor of ordinances shall add, delete or substitute words and phrases as appropriate to change any ordinance term which refers to the male or female gender to a term which is neutral in gender, as long as the meaning or effect of the ordinance is not changed.
- (b) In preparing any amendment to, revision of, or supplement to the Revised Ordinances of Honolulu, the revisor of ordinances may:
  - (1) Replace the phrase "effective date of this ordinance" or similar phrase used in an ordinance with the actual date on which the ordinance takes effect;
  - (2) Adjust the location of table and column headings and footnotes as deemed appropriate and may indicate that the table or column is continued;
  - (3) Correct manifest clerical or typographical errors;
  - (4) Number and renumber chapters, articles, parts, sections, and parts of sections;
  - (5) Rearrange sections;
  - (6) Add or change reference numbers to agree with renumbered chapters, articles, parts, or sections;
  - (7) Change capitalization for the purpose of uniformity;
  - (8) Change the form of numbers and of monetary sums for the purpose of uniformity;
  - (9) Delete any ordinance or part thereof that has been expressly repealed under the terms of the ordinance; and
  - (10) Prepare for submission to the city council from time to time:
    - (A) Bills to make additional amendments necessary to eliminate inconsistencies or correct technical flaws in and clarify the intent of the Revised Ordinances of Honolulu; and
    - (B) A rewriting and revision, either complete, partial, or topical of the Revised Ordinances of Honolulu.

(Added by Ord. 95-45; Am. Ord. 01-55)

Article 17. Sexual Harassment Policy for City Officer or Employee

Sections:

- 1-17.1 "Sexual harassment" -- Definition.
- 1-17.2 Other definitions.
- 1-17.3 Prohibition of sexual harassment.
- 1-17.4 Complaint, investigation, and resolution procedures for departments.
- 1-17.5 Complaint, investigation, and resolution procedures for council and council offices.
- 1-17.6 Use of "reasonable person of the same gender standard."
- 1-17.7 Disciplinary action.
- 1-17.8 Retention of written report on complaint and investigation.
- 1-17.9 Prohibition of retaliation for complaint.
- 1-17.10 Malicious false complaint.
- 1-17.11 Training program for equal employment opportunity officers and management or supervisory officers and employees.
- 1-17.12 Sexual harassment policy training for each officer and employee.
- 1-17.13 Nonexclusiveness of provisions of article.

Sec. 1-17.1 "Sexual harassment" -- Definition.

For the purpose of this article, "sexual harassment" means any of the following:

- (a) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to a second officer or employee when:

- (1) Submission to the advances, requests, or conduct is a term or condition of the second officer's or employee's employment;
  - (2) Submission to or rejection of the advances, requests, or conduct is used as the basis for employment decisions relating to the second officer or employee; or
  - (3) The advances, requests, conduct, or visual display has the purpose or effect of:
    - (A) Substantially interfering with the second officer's or employee's work performance; or
    - (B) Creating an intimidating, hostile, or offensive working environment for the second officer or employee;
- (b) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to an individual under consideration for city employment when:
- (1) Submission to the advances, requests, or conduct is used as a term or condition for the employment of the individual;
  - (2) Submission to or rejection of the advances, requests, or conduct is used as the basis for a decision to employ or reject the individual; or
  - (3) The advances, requests, conduct, or visual display has the purpose or effect of:
    - (A) Substantially interfering with the individual's ability to display qualifications for city employment; or
    - (B) Creating an intimidating, hostile, or offensive environment in which the individual seeks city employment; and
- (c) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to an individual engaged in business or other activity with the city when:
- (1) Submission to the advances, requests, or conduct is a term or condition of the individual's engagement in business or other activity with the city;
  - (2) Submission to or rejection of the advances, requests, or conduct is used as the basis for a decision on the individual's engagement in business or other activity with the city; or
  - (3) The advances, requests, conduct, or visual display has the purpose or effect of:
    - (A) Substantially interfering with the individual's engagement in business or other activity with the city; or
    - (B) Creating an intimidating, hostile, or offensive environment in which the individual engages in business or other activity with the city.

(Added by Ord. 93-84)

**Sec. 1-17.2 Other definitions.**

For the purpose of this article:

"Council office" means the office of the city clerk and office of council services.

"Department" means each executive department of the city. For the purpose of this article, the office of the mayor, office of the managing director, office of information and complaint, civil defense agency, and municipal reference and records center shall each be deemed a "department."

"Employee" means the same as defined under Section 1-4.1.

"Individual engaged in business or other activity with the city" means an individual who:

- (1) Is performing services as an independent contractor with the city;
- (2) Is seeking an independent contract with the city;
- (3) Is seeking to sell or has sold products or services to the city;
- (4) Is applying for or has received a permit or other ministerial or discretionary approval from the city;
- (5) Is appealing or has appealed a decision by the city to a city department, board, officer, or employee;
- (6) Is applying for or participating in a city program available to the general public or a class of the general public;
- (7) Is engaged in lobbying, as defined under Section 3-13.2;
- (8) Is engaged in influencing the city's policy making process, as defined under Section 3-13.2, but is not registered as a lobbyist; or
- (9) Is working as a journalist for a news medium.

"Individual under consideration for city employment" means an individual who has applied for and is being considered for employment with the city.

"Offender" means an officer or employee who has engaged in sexual harassment.

"Officer" means the same as defined under Section 1-4.1.

"Victim" means an officer, employee, or individual who has been subjected to sexual harassment. (Added by Ord. 93-84; Am. Ord. 05-033)

**Sec. 1-17.3 Prohibition of sexual harassment.**

- (a) An officer or employee shall not engage in the sexual harassment of another officer or employee.
- (b) An officer or employee shall not engage in the sexual harassment of an individual who is under consideration for city employment.
- (c) An officer or employee shall not engage in the sexual harassment of an individual engaged in business or other activity with the city.
- (d) A management or supervisory officer or employee shall not knowingly permit a subordinate officer or employee to engage in sexual harassment prohibited under this section.

(Added by Ord. 93-84)

**Sec. 1-17.4 Complaint, investigation, and resolution procedures for departments.**

- (a) Each department shall comply with the procedures of this section, which relate to the receipt, investigation, and resolution of complaints of sexual harassment.

With respect to an alleged victim or alleged offender who is an officer or employee covered by a collective bargaining agreement, the procedures of this section shall be additional to any grievance or other procedures in the agreement. Each department shall inform its officers and employees of the procedures of this section.

(b) Each department shall allow an alleged victim to make an informal or formal complaint of sexual harassment as follows:

- (1) If the alleged victim is an officer or employee, the making of a complaint to the:
  - (A) Alleged victim's immediate supervisor or, if the immediate supervisor is the alleged offender, to the next higher supervisor;
  - (B) Alleged victim's department director;
  - (C) Alleged victim's departmental equal employment opportunity officer; or
  - (D) City's equal employment opportunity officer;
 or
- (2) If the alleged victim is an individual under consideration for city employment or an individual engaged in business or other activity with the city, the making of a complaint to the:
  - (A) Alleged offender's immediate supervisor;
  - (B) Alleged offender's department director;
  - (C) Alleged offender's departmental equal employment opportunity officer; or
  - (D) City's equal employment opportunity officer.

(c) Each department shall allow an alleged victim to make an informal complaint verbally or in writing. When making the complaint, the alleged victim shall name the alleged offender and state the nature and circumstance of the alleged sexual harassment. The officer or employee receiving the complaint and/or departmental equal employment opportunity officer shall promptly investigate the complaint. The investigation shall be conducted in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment. During the investigation, the investigating officer or employee shall allow the alleged offender to respond to the complaint. The investigation shall be completed within 10 working days after the making of the complaint, unless additional time for completion is considered justified and approved by the city's equal employment opportunity officer. If the complaint is deemed true, the offender shall be notified of the sexual harassment and disciplined by a warning not to sexually harass or retaliate against the victim and, if deemed warranted, other disciplinary action imposed in accordance with Section 1-17.7. If the complaint is deemed false or unsupported by the evidence, the complaint shall be dismissed. A written report shall be prepared on each informal complaint and the findings and results of the investigation.

(d) Each department shall allow an alleged victim to make a formal complaint:

- (1) Without first making an informal complaint; or
- (2) While an investigation or resolution of an informal complaint is pending if the alleged victim desires to make the formal complaint.

The complaint shall be in writing, name the alleged offender, and state the nature and circumstance of the alleged sexual harassment.

A team of officers and employees shall promptly investigate the complaint. The team shall be selected by the alleged offender's department director or, if the director is the alleged offender, by the city's equal employment opportunity officer. The team shall include at least one member of each gender. At least one departmental equal employment opportunity officer shall be on the team. Selected officers and employees may be from any department.

The investigation shall be conducted in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment. During the investigation, the team shall allow the alleged offender to respond to the complaint.

The investigation shall be completed within 10 working days after the filing of the complaint, unless additional time for completion is considered justified and approved by the city's equal employment opportunity officer. If the complaint is deemed true, the offender shall be notified in writing of the sexual harassment and disciplined by a warning not to sexually harass or retaliate against the victim and, if deemed warranted, other disciplinary action imposed in accordance with Section 1-17.7. If the complaint is deemed false or unsupported by the evidence, the complaint shall be dismissed. A written report shall be prepared on each formal complaint and the findings and results of the investigation.

(e) Each department shall maintain the confidentiality of the alleged victim and alleged offender during an investigation of an informal or formal complaint; provided that the names of the alleged victim and alleged offender may be revealed to the following:

- (1) Each other;
- (2) Any officer or employee investigating a complaint;
- (3) The alleged victim's or alleged offender's department director;
- (4) The city's equal employment opportunity officer;
- (5) Any witness to the alleged sexual harassment under investigation; and
- (6) Any other person to whom revealing the names is necessary to conduct the investigation.

Each department also shall maintain the confidentiality of the written report on a complaint and investigation. Inspection of the report shall be permitted only by the following: the parties to the complaint; officers or employees involved in the management, supervision, or disciplining of the parties to the complaint; the city's equal employment opportunity officer; and other persons authorized by law or ordinance.

(f) Each department may establish procedures and provisions additional to, but consistent with, the procedures of this section. The additional procedures and provisions may differ among the departments, unless the mayor determines that uniform procedures and provisions are desirable. If so determined, the additional procedures and provisions shall be uniform among all departments.

The additional procedures and provisions available to an alleged victim who is an officer or employee need not be adopted by rules under HRS Chapter 91. The procedures and provisions shall be established in the same manner as other

regulations concerning only the internal management of an executive agency and not affecting private rights of or procedures available to the public.

The additional procedures and provisions available to an alleged victim who is not an officer or employee shall be adopted by rules in accordance with HRS Chapter 91. If directed by the mayor, one department may adopt rules establishing uniform procedures and provisions on behalf of and applicable to all other departments.

(Added by Ord. 93-84)

**Sec. 1-17.5 Complaint, investigation, and resolution procedures for council and council offices.**

- (a) The council and each council office shall comply with the procedures of this section, which relate to the receipt, investigation, and resolution of complaints of sexual harassment.  
With respect to an alleged victim or alleged offender who is an officer or employee covered by a collective bargaining agreement, the procedures of this section shall be additional to any grievance or other procedures in the agreement. The council and each council office shall inform its officers and employees of the procedures of this section.
- (b) The council and each council office shall allow an alleged victim to make an informal or formal complaint of sexual harassment as follows:
- (1) If the alleged victim is an officer or employee, the making of a complaint to the:
    - (A) Alleged victim's immediate supervisor or, if the immediate supervisor is the alleged offender, to the next higher supervisor;
    - (B) Councilmember employing the alleged victim;
    - (C) Head or equal employment opportunity officer of the council office employing the alleged victim;
    - (D) Council chair; or
    - (E) City's equal employment opportunity officer;
 or
  - (2) If the alleged victim is an individual under consideration for city employment or an individual engaged in business or other activity with the city, the making of a complaint to the:
    - (A) Alleged offender's immediate supervisor;
    - (B) Councilmember employing the alleged offender;
    - (C) Head or equal employment opportunity officer of the council office employing the alleged offender;
    - (D) Council chair; or
    - (E) City's equal employment opportunity officer.
- (c) The council and each council office shall allow an alleged victim to make an informal complaint verbally or in writing. When making the complaint, the alleged victim shall name the alleged offender and state the nature and circumstance of the alleged sexual harassment.  
The officer or employee receiving the complaint and/or council office equal employment opportunity officer shall promptly investigate the complaint. The investigation shall be conducted in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment. During the investigation, the investigating officer or employee shall allow the alleged offender to respond to the complaint.  
The investigation shall be completed within 10 working days after the making of the complaint, unless additional time for completion is considered justified and approved by the city's equal employment opportunity officer. If the complaint is deemed true, the offender shall be notified of the sexual harassment and disciplined by a warning not to sexually harass or retaliate against the victim and, if deemed warranted, other disciplinary action imposed in accordance with Section 1-17.7. If the complaint is deemed false or unsupported by the evidence, the complaint shall be dismissed. A written report shall be prepared on each informal complaint and the findings and results of the investigation.
- (d) The council and each council office shall allow an alleged victim to make a formal complaint:
- (1) Without first making an informal complaint; or
  - (2) While an investigation or resolution of an informal complaint is pending if the alleged victim desires to make the formal complaint.  
The complaint shall be in writing, name the alleged offender, and state the nature and circumstance of the alleged sexual harassment.  
A team of officers and employees shall promptly investigate the complaint. The team shall be selected by the council chair if the chair received the complaint. Otherwise, the team shall be selected by the officer employing the alleged offender or, if that officer is the alleged offender, by the city's equal employment opportunity officer. The team shall include at least one member of each gender. At least one council office or departmental equal employment opportunity officer shall be on the team. Selected officers and employees may be from the council, any council office, or any department.  
The investigation shall be conducted in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment. During the investigation, the team shall allow the alleged offender to respond to the complaint.  
The investigation shall be completed within 10 working days after the filing of the complaint, unless additional time for completion is considered justified and approved by the city's equal employment opportunity officer. If the complaint is deemed true, the offender shall be notified in writing of the sexual harassment and disciplined by a warning not to sexually harass or retaliate against the victim and, if deemed warranted, other disciplinary action imposed in accordance with Section 1-17.7. If the complaint is deemed false or unsupported by the evidence, the complaint shall be dismissed. A written report shall be prepared on each formal complaint and the findings and results of the investigation.
- (e) The council and each council office shall maintain the confidentiality of the alleged victim and alleged offender during an investigation of an informal or formal complaint; provided that the names of the alleged victim and alleged offender may be revealed to the following:
- (1) Each other;
  - (2) Any officer or employee investigating a complaint;

- (3) If the alleged victim or alleged offender is employed by a councilmember, the council chair and that councilmember;
  - (4) If the alleged victim or alleged offender is employed by a council office, the council chair and head of that council office;
  - (5) The city's equal employment opportunity officer;
  - (6) Any witness to the alleged sexual harassment under investigation; and
  - (7) Any other person to whom revealing the names is necessary to conduct the investigation.
- The council and each council office also shall maintain the confidentiality of the written report on a complaint and investigation. Inspection of the report shall be permitted only by the following: the parties to the complaint; officers or employees involved in the management, supervision, or disciplining of the parties to the complaint; the city's equal employment opportunity officer; and other persons authorized by law or ordinance.
- (f) The council and each council office may establish procedures and provisions additional to, but consistent with, the procedures of this section. The additional procedures and provisions shall be established separately by the council and each council office, unless the council chair determines that uniform procedures and provisions are desirable. If so determined, the additional procedures and provisions shall be uniform among the council and each council office. Adoption of the additional procedures and provisions by rules under HRS Chapter 91 shall not be required.

(Added by Ord. 93-84)

**Sec. 1-17.6 Use of "reasonable person of the same gender standard."**

- (a) In determining whether an alleged conduct constitutes sexual harassment, an officer, employee, or team investigating a complaint of sexual harassment pursuant to Section 1-17.4 or Section 1-17.5 shall use the "reasonable person of the same gender standard." Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard."
- (b) The investigating officer, employee, or team shall look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advance, sexual favor request, or visual display and the context in which the alleged conduct occurred.

(Added by Ord. 93-84)

**Sec. 1-17.7 Disciplinary action.**

- (a) An officer or employee who is found, after an informal complaint and investigation, to be an offender shall be disciplined by the warning required under Section 1-17.4(c) or Section 1-17.5(c) and may be otherwise appropriately disciplined if deemed warranted.  
An officer or employee who is found, after a formal complaint and investigation, to be an offender shall be appropriately disciplined.
- (b) Any disciplinary action, additional to the warning required under Section 1-17.4(c), (d) or Section 1-17.5(c), (d), shall be determined:
  - (1) In accordance with just cause standards; and
  - (2) On a case-by-case basis, with consideration of the severity of the sexual harassment and, if any, other incidents of sexual harassment by the offender.
- (c) Disciplinary action against an offender may include, but is not limited to, one or more of the following:
  - (1) Written reprimand;
  - (2) Suspension without pay;
  - (3) Disciplinary demotion; or
  - (4) Dismissal from employment.A particular disciplinary action shall not be taken against an offender if not permitted by law, ordinance, or collective bargaining agreement relevant to that particular offender.
- (d) For an offender who is an elected officer of the executive branch, the appropriate disciplinary action shall be determined by the investigating officer or team.
- (e) For an offender who is a department director, the appropriate disciplinary action shall be determined by the director's appointing authority. This subsection shall not apply to the prosecuting attorney, who shall be subject to subsection (d).
- (f) For an offender who is an officer or employee of a department, but not its director, the appropriate disciplinary action shall be determined by the department director.
- (g) For an offender who is a councilmember or head of a council office, the appropriate disciplinary action shall be determined by the council.
- (h) For an offender who is an officer or employee employed by a councilmember or council office, the appropriate disciplinary action shall be determined by the councilmember or head of the office employing the offender.
- (i) All disciplinary actions, prior to implementation, shall be given final review and approval by the city's equal employment opportunity officer.

(Added by Ord. 93-84)

**Sec. 1-17.8 Retention of written report on complaint and investigation.**

- (a) This section applies to each written report on an informal or formal complaint and investigation required under Section 1-17.4 and Section 1-17.5.
- (b) The written report on a complaint against an officer or employee of an executive department shall be retained by that department.  
The written report on a complaint against a councilmember or employee of a councilmember shall be retained by the council.  
The written report on a complaint against an officer or employee of a council office shall be retained by that office.

- (c) The written report on a complaint deemed true shall be retained for at least five years after the offender terminates service as a city officer or employee. After the five-year period, the report may be discarded. The written report on a dismissed complaint shall be retained for a two-year period, commencing from the date the report is completed. Upon termination of the period, the report shall be expunged, unless its retention is requested by the officer or employee, the complaint against whom was dismissed. When the officer or employee requests retention, the report shall be retained at least until the officer or employee terminates service with the city. After the termination of service, the report may be discarded.
- This subsection shall be subordinate to collective bargaining agreement provisions concerning the retention and expungement of information on an officer or employee covered by the agreement. Accordingly, the collective bargaining agreement provisions, rather than this subsection, shall apply with respect to the retention and expungement of the written report on a complaint against the officer or employee.

(Added by Ord. 93-84)

**Sec. 1-17.9 Prohibition of retaliation for complaint.**

- (a) An officer or employee shall not retaliate against another officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint.
- (b) An officer or employee who retaliates against another officer, employee, or individual in violation of subsection (a) shall be appropriately disciplined. The disciplinary action may consist of:
- (1) Any of the disciplinary actions listed under Section 1-17.7; or
  - (2) Any other disciplinary action authorized by law, ordinance, or rule.
- If the officer or employee is covered by a collective bargaining agreement, the disciplinary action against the officer or employee shall not be contrary to the agreement.
- (c) Disciplinary action against an officer, employee, or individual making a malicious false complaint shall not be considered retaliation prohibited under this section.

(Added by Ord. 93-84)

**Sec. 1-17.10 Malicious false complaint.**

- (a) An officer, employee, or individual shall not make a malicious false complaint of sexual harassment.
- (b) An officer or employee who has made a malicious false complaint shall be appropriately disciplined or sanctioned in accordance with law, ordinance, or rule. The disciplinary action may consist of:
- (1) Any of the disciplinary actions listed under Section 1-17.7; or
  - (2) Any other disciplinary action authorized by law, ordinance, or rule.
- (c) An individual, other than an officer or employee, who has made a malicious false complaint shall be subject to appropriate sanctions authorized by law, ordinance, or rule. The sanctions may include the termination of the individual's business or other activity with the city or disqualification of the individual from participating in any business or other activity with the city.

(Added by Ord. 93-84)

**Sec. 1-17.11 Training program for equal employment opportunity officers and management or supervisory officers and employees.**

- (a) The following persons shall complete a training program on sexual harassment: the city's equal employment opportunity officer, each council office equal employment opportunity officer, each departmental equal employment opportunity officer, and each management or supervisory officer and employee. The program shall provide each equal employment opportunity officer and each management or supervisory officer and employee with training to properly:
- (1) Identify and investigate sexual harassment;
  - (2) Interact with an alleged victim, alleged offender, and witness during an investigation; and
  - (3) Apply and interpret this article and other pertinent laws on sexual harassment.
- (b) The training program shall be formulated and provided by the department of personnel.

(Added by Ord. 93-84)

**Sec. 1-17.12 Sexual harassment policy training for each officer and employee.**

- (a) Each officer and employee shall receive training of the highest standards on the sexual harassment policy at least once every two years in accordance with this section.
- (1) An officer or employee who enters city employment after July 1, 1997 shall receive the training during the orientation provided upon entering employment.
  - (2) An officer who enters city service, other than employment, after July 1, 1997 shall receive the training within the one-month period following entrance into service.
  - (3) An officer or employee who is in city employment or service on July 1, 1997 shall receive the training within the two-year period following that date.
  - (4) For the duration of city employment or service after the training described in subdivision (1), (2), or (3), an officer or employee shall again receive the training at least once within each two-year period following the immediate previous training.
- (b) The department of personnel shall be responsible for scheduling and enrolling an officer or employee for the training on the sexual harassment policy. In doing so, the department of personnel shall consult with the officer's or employee's appointing authority to set a training date and time which will cause the least possible disruption to the officer's or employee's work, service, or department or office of employment. After the department of personnel enrolls an officer or employee for training, the officer's or employee's appointing authority shall require the officer or employee to attend the training on the scheduled date and time. The department may excuse an enrolled officer or employee from attending for legitimate reason, but shall again enroll the excused officer or employee for training on another date and time in accordance with this section.

- (c) The department of personnel shall be responsible for providing the training on the sexual harassment policy to officers and employees. The training shall be designed to make officers and employees aware of the policy, actions which constitute sexual harassment, and impacts of violating the policy. For management or supervisory officers or employees, the training required under this section shall be integrated with that required under Section 1-17.11.

(Added by Ord. 93-84; Am. Ord. 97-25)

**Sec. 1-17.13 Nonexclusiveness of provisions of article.**

- (a) The complaint, investigation, resolution, and disciplinary provisions of this article shall not be exclusive. This article shall not be construed as preventing:

- (1) An officer, employee, or individual from filing a complaint of sexual harassment with any other government agency authorized to receive the complaint;
- (2) An officer, employee, or individual from filing a civil action in court based on sexual harassment; or
- (3) An officer or employee covered by a collective bargaining agreement from filing a grievance based on sexual harassment in accordance with the agreement.

- (b) Nor shall an officer, employee, or individual be required to exhaust the procedures and remedies of this article prior to filing a complaint with any other government agency, grievance under a collective bargaining agreement, or civil action in court.

(Added by Ord. 93-84)

**Article 18. Sexual Harassment Policy for Employer Having a Contract with the City\***

**Sections:**

- 1-18.1 "Sexual harassment" -- Definition.**
- 1-18.2 Other definitions.**
- 1-18.3 Applicability of article.**
- 1-18.4 Sexual harassment policy required of employer.**
- 1-18.5 Pledge of compliance--Prohibition on contract without pledge--Revocation, termination, or suspension of contract for noncompliance with pledge.**
- 1-18.6 Debarment for violation.**
- 1-18.7 Rules.**

**Sec. 1-18.1 "Sexual harassment" -- Definition.**

- (a) For the purpose of this article, "sexual harassment" means any of the following:
  - (1) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to a second officer or employee when:
    - (A) Submission to the advances, requests, or conduct is a term or condition of the second officer's or employee's employment;
    - (B) Submission to or rejection of the advances, requests, or conduct is used as the basis for employment decisions relating to the second officer or employee; or
    - (C) The advances, requests, conduct, or visual display has the purpose or effect of:
      - (i) Substantially interfering with the second officer's or employee's work performance; or
      - (ii) Creating an intimidating, hostile, or offensive working environment for the second officer or employee;
  - (b) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to an individual under consideration for employment with an employer when:
    - (1) Submission to the advances, requests, or conduct is used as a term or condition for the employment of the individual;
    - (2) Submission to or rejection of the advances, requests, or conduct is used as the basis for a decision to employ or reject the individual; or
    - (3) The advances, requests, conduct, or visual display has the purpose or effect of:
      - (A) Substantially interfering with the individual's ability to display qualifications for employment; or
      - (B) Creating an intimidating, hostile, or offensive environment in which the individual seeks employment;
  - (c) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to an individual engaged in business with an employer when:
    - (1) Submission to the advances, requests, or conduct is a term or condition of the individual's engagement in business with the employer;
    - (2) Submission to or rejection of the advances, requests, or conduct is used as the basis for a decision on the individual's engagement in business with the employer; or
    - (3) The advances, requests, conduct, or visual display has the purpose or effect of:
      - (A) Substantially interfering with the individual's engagement in business with the employer; or
      - (B) Creating an intimidating, hostile, or offensive environment in which the individual engages in business with the employer.

(Added by Ord. 93-84)

**Sec. 1-18.2 Other definitions.**

For the purpose of this article:

"City officer in charge" means the city executive officer having the final authority to enter into or renew a contract with an employer.

"Employee" means an individual employed by an employer.

"Employer" means a sole proprietorship, partnership, profit or nonprofit corporation, or any other private person employing at least one individual.

"Individual engaged in business with an employer" means an individual who:

- (1) Is performing services as an independent contractor with an employer;
- (2) Is seeking an independent contract with an employer;
- (3) Is seeking to sell or has sold products or services to an employer;
- (4) Is engaged or seeking to engage in a business activity jointly with an employer;
- (5) Is a customer or seeking to become a customer of an employer; or
- (6) Is a client or seeking to become a client of an employer.

"Individual under consideration for employment with an employer" means an individual who has applied for and is being considered for employment with an employer.

"Officer" means an individual serving as a director, officer, partner, or proprietor of an employer. (Added by Ord. 93-84)

**Sec. 1-18.3 Applicability of article.**

This article shall apply to the following employers having contracts with the city:

- (1) An employer under contract to provide products or services to or on behalf of the city;
- (2) An employer with a contract to lease real property from the city; and
- (3) An employer with a contract to operate a concession on city property.

(Added by Ord. 93-84)

**Sec. 1-18.4 Sexual harassment policy required of employer.**

(a) Each employer to which this article applies shall have and enforce a policy prohibiting sexual harassment which sets forth the same or greater protections than those contained in Article 17 which are correspondingly applicable to the employer's business and including the following:

- (1) Prohibitions against an officer's or employee's sexual harassment of the following:
  - (A) Another officer or employee of the employer;
  - (B) An individual under consideration for employment with the employer; or
  - (C) An individual doing business with the employer;
- (2) A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under subdivision (1);
- (3) A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
- (4) A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;
- (5) Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;
- (6) Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
- (7) A provision requiring the use of the "reasonable person of the same gender standard," as described under Section 1-17.6, to determine if sexual harassment has occurred;
- (8) Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and
- (9) For an employer with at least five employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

(b) The policy required under this section shall be in effect for at least the duration of the employer's contract with the city.

(c) The department of finance shall prepare a standard form of the policy required under this section. The standard form shall set forth a policy containing minimum requirements which conform to this section.

(Added by Ord. 93-84)

**Sec. 1-18.5 Pledge of compliance -- Prohibition on contract without pledge -- Revocation, termination, or suspension of contract for noncompliance with pledge.**

(a) When entering into or renewing a contract with an employer, the city officer in charge shall require the employer to pledge compliance with:

- (1) This article; and
- (2) The sexual harassment policy set forth in the standard form prepared by the department of finance.

A provision in the contract or renewal document shall express the pledge. Approval of the contract or renewal document by the employer shall be deemed an agreement with the pledge.

(b) A city officer in charge shall not enter into or renew a contract with an employer unless the employer agrees to the pledge required by this section.

A city officer in charge may revoke, terminate, or suspend a contract with an employer if finding that the employer is not in compliance with the pledge required by this section.

(Added by Ord. 93-84)

**Sec. 1-18.6 Debarment for violation.**

(a) The director of finance may debar an employer who, contrary to a pledge made pursuant to Section 1-18.5, has violated this article or the sexual harassment policy set forth in the standard form prepared by the department of finance.

The director of finance shall have discretion in determining whether to debar an employer for a violation. When making a debarment decision, the director of finance shall consider the seriousness of the violation and any remedial measures taken by or mitigating factors applicable to the employer.

- (b) The debarment of an employer:
  - (1) Shall extend to the employer's divisions or other organizational elements; and
  - (2) May extend to a business affiliate of the employer if so ordered by the director of finance. A "business affiliate of the employer" means a business concern, organization, or individual which, directly or indirectly:
    - (A) Has the power to control the employer;
    - (B) Is subject to the control of the employer; or
    - (C) Is subject, along with the employer, to the control of a third party.

Any provision of this section applicable to a "debarred employer" also shall be applicable to a division or other organizational element of the debarred employer and, if so ordered by the director of finance, a business affiliate of the debarred employer.

- (c) The director of finance shall set the debarment period for a debarred employer. The debarment period shall be commensurate with the seriousness of the employer's violation, but not more than three years.
- (d) Unless the director of finance orders otherwise for a compelling reason, a debarred employer shall not be eligible for the following during the debarment period:
  - (1) The award or renewal of a contract with the city; or
  - (2) A subcontract to another person's contract with the city.
- (e) The director of finance shall establish procedures for making a decision on the proposed debarment of an employer. The procedures shall include, but not be limited to, the following:
  - (1) Notice to the employer proposed to be debarred; and
  - (2) An opportunity for the employer to present arguments against debarment.

The director of finance also may establish rules or policies deemed necessary to implement this section.

The procedures, rules, and policies shall be in conformance with HRS Section 103D-702 and any rules of the state

procurement policy office.

(Added by Ord. 93-84)

**Sec. 1-18.7 Rules.**

The department of finance shall have the power to enact rules pursuant to HRS Chapter 91 to carry out the purposes of this article. (Added by Ord. 93-84)

[\*Editor's Note: Section 3 of Ord. 93-84 requires the department of finance to prepare the standard form required under Sec. 1-17.4(c) by January 1, 1994. Section 3 of Ord. 93-84 also provides that Art. 18 shall apply to an employer entering into or renewing a contract with the city after December 31, 1993.]

**Article 19. Addition of Unpaid Civil Fines to Taxes, Fees, or Charges Collected by the City\***

[\*Editor's Note: Sec. 3 of Ord. 93-109 originally provided that Ch. 1, Art. 19, be repealed as of June 30, 1997; however, Ord. 96-42 deleted the repeal provision to make Ch. 1, Art. 19, permanent.]

**Sections:**

- 1-19.1 Definitions.**
- 1-19.2 Judicial authority.**
- 1-19.3 Executive authority.**
- 1-19.4 Administrative procedures.**
- 1-19.5 Collection procedures.**

**Sec. 1-19.1 Definitions.**

As used in this article:

"Civil fines" means any monetary penalty, imposed by competent judicial or executive authority, on a person for violation of city ordinances, rules, or regulations.

"Civil fines program" means any duly adopted program for imposing civil fines as a means of enforcing violations of city ordinances, rules, or regulations.

"Unpaid civil fines" means any outstanding civil fines due and owing to the city by a person, in whole or in part. (Added by Ord. 93-109)

**Sec. 1-19.2 Judicial authority.**

The addition of any unpaid civil fines to any taxes, fees, or charges collected by the city may be ordered by any court of competent jurisdiction. (Added by Ord. 93-109)

**Sec. 1-19.3 Executive authority.**

- (a) Any unpaid civil fines which remain due, after all rights to administrative appeal or judicial review have been exhausted, and as may be further provided in Section 1-19.5, may then be added by administrative order to any taxes, fees, or charges collected by the city by any administrative agency empowered to collect such civil fines pursuant to Section 1-19.5. The city may condition the issuance or renewal of any city license, approval or permit for which a fee or charge is assessed, except for water for residential use and sewer charges, on payment of the unpaid civil fines, and any such license, approval or permit may be withheld until full payment of all such unpaid civil fines has been made.

- (b) Upon recordation of a notice of unpaid civil fines in the bureau of conveyances, the amount of the civil fine, including any increase in the amount of the fine which the city may assess, and any enforcement cost, shall constitute a lien upon all real property belonging to any person liable for the unpaid civil fines.
  - (c) The lien in favor of the city shall be subordinate to any lien in favor of any person recorded or registered prior to the recordation of the notice of unpaid civil fines and senior to any lien recorded or registered after the recordation of the notice. The lien shall continue until the unpaid civil fines are paid in full or until a certificate of release or partial release of the lien, prepared by the city at the owner's expense, is recorded. The notice of unpaid civil fines shall state the amount of the fine as of the date of the notice and maximum permissible daily increase of the fine. The city shall not be required to include a social security number, state general excise taxpayer identification number, or federal employer identification number on the notice. Recordation of the notice in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in land court under HRS Chapter 501.
  - (d) All remedies and penalties under this article may be enforced in civil proceedings by the corporation counsel.
- (Added by Ord. 93-109; Am. Ord. 05-035)

**Sec. 1-19.4 Administrative procedures.**

- (a) Notices of Order. Notices of order for violations of city ordinances, rules, or regulations, for which civil fines are imposed, shall include, in addition to any other required content, the following:
    - (1) A statement declaring that the civil fines being imposed, if unpaid within the time periods prescribed therein, can be added to specified taxes, fees, or charges collected by the city; and
    - (2) A statement or statements advising persons receiving notices of order that their rights to an administrative appeal or judicial review, as appropriate, shall also involve all potential remedies, including the addition of unpaid civil fines to certain taxes, fees, or charges collected by the city, and specified in the notice of order.
  - (b) Rules and Regulations. Only the executive agency administering a specific civil fines program shall be able to administratively add those unpaid civil fines imposed under their authority to specified taxes, fees, or charges collected by the city. Prior to administratively adding unpaid civil fines to any taxes, fees, or charges collected by the city, each eligible executive agency shall adopt or amend appropriate rules and regulations, pursuant to Article 9 of this chapter, for administratively adding unpaid civil fines, and such rules and regulations shall specify, at least, the following:
    - (1) The particular taxes, fees, or charges to which unpaid civil fines may be added;
    - (2) The manner whereby written notification shall be made to the executive agency responsible for administering, and thereby collecting, the unpaid civil fines after their addition to each particular tax, fee, or charge;
    - (3) The period of delinquency which must elapse before any unpaid civil fines may be added to any taxes, fees, or charges;
    - (4) The manner whereby written notification shall be made to any person affected by the addition of unpaid civil fines to any taxes, fees, or charges collected by the city, pursuant to this section. The express purpose of such notice shall be only to properly inform an affected person of the action taken; and such notice shall not be construed to provide any additional rights for further review or appeal, other than the appeal rights already provided by this article. Such notice shall provide statements specifying, at a minimum:
      - (A) The particular tax, fee, or charge to which any unpaid civil fine has been administratively added as provided in the notice of order;
      - (B) The effective date of the addition of the unpaid civil fine to the tax, fee, or charge; and
      - (C) The amount of the unpaid civil fine which has been added to the tax, fee, or charge; and
    - (5) Where daily civil fines are accruing, unpaid civil fines shall be added to taxes, fees, or charges, as fixed amounts, subject to the following alternative methods:
      - (A) Unpaid civil fines may be added to any taxes, fees, or charges at such time when the civil fines cease to accrue, whereby the accrual shall cease at a point in time specified in the rules and regulations, and the total fine at the cessation of accrual shall become the total unpaid civil fine deemed due and owing; or
      - (B) Unpaid civil fines may continue to accrue so long as a violation is outstanding, whereby the unpaid balance due and owing each year may then be added to the tax, fee, or charge, as specified in the rules and regulations, and unpaid balances accruing after this date may be added annually in subsequent years, in the same manner, until paid in full.
- (Added by Ord. 93-109)

**Sec. 1-19.5 Collection procedures.**

- (a) After any unpaid civil fines are added to any taxes, fees, or charges collected by the city, the unpaid civil fines shall be deemed immediately due, owing and delinquent, and shall be collected in any lawful manner. The executive agency with direct authority for the collection of a particular tax, fee, or charge shall be responsible for the collection of any unpaid civil fine after its addition to the particular tax, fee, or charge.
  - (b) The procedure for collection of any unpaid civil fines shall be in addition to any other procedures for collection available to the city by ordinance, or rule or regulation, or to any court of competent jurisdiction.
- (Added by Ord. 93-109; Am. Ord. 05-035)

**Article 20. Drug and Alcohol Abuse Training Program**

**Sections:**

- 1-20.1 Definitions.**
- 1-20.2 Drug and alcohol abuse policy training for each officer and employee.**
- 1-20.3 Training program for management or supervisory officers and employees.**

**Sec. 1-20.1 Definitions.**

For purposes of this article, unless another meaning is clearly manifested, the following terms shall have the following respective meanings:

"Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl and isopropyl alcohol.

"Alcohol-testing policy" means any policy, whether established by any federal, state or city statute, ordinance, rule, regulation, or administrative directive, or by an applicable collective bargaining agreement, under which a city officer or employee may be tested for the presence of alcohol in the officer's or employee's system.

"CFR" means Code of Federal Regulations.

"Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- (1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds);
- (2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds);
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the federal statutes on the transportation of hazardous materials, Public Law 103-272, July 5, 1994, 108 Statutes at Large 759, as amended, codified at 49 USC Chapter 51, and which require the motor vehicle to be placarded under the federal Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

"Controlled Substances Act" means Public Law 91-513, October 27, 1970, 84 Statutes at Large 1236, Titles 2 and 16, as amended, codified at 21 USC §801, et seq.

"Driver" means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to the city or who operate a commercial motor vehicle at the direction of or with the consent of the city.

"Drug" means any controlled substance, including marijuana, cocaine, any opiate, any amphetamine and phencyclidine, identified in the federal Controlled Substances Act, as amended.

"Drug-testing policy" means any policy, whether established by any federal, state or city statute, ordinance, rule, regulation, or administrative directive, or by an applicable collective bargaining agreement, under which a city officer or employee may be tested for the presence of any particular drug or class of drugs in the officer's or employee's system.

"Employee" means the same as that term is defined in Section 1-4.1, provided the term shall also include any person meeting the definition of "driver" in this section.

"Officer" means the same as that term is defined in Section 1-4.1.

"Reasonable suspicion test" is a test for the presence of alcohol and/or drugs in an officer's or employee's system, which test may be required by a management or supervisory officer or employee under the city's alcohol-testing policy, the city's drug-testing policy, or both, as applicable, based on a specific, contemporaneous, and articulable observation of the appearance, behavior, speech or body odor of the tested officer or employee leading to a reasonable suspicion of alcohol misuse or drug use.

"Safety-sensitive functions" shall include:

- (1) All time at a city or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the city;
- (2) All time inspecting equipment as required by 49 CFR Sections 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle, except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR Section 393.76);
- (5) All time loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading of a commercial motor vehicle, attending such a vehicle being loaded or unloaded, remaining in readiness to operate such a vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.

(Added by Ord. 97-70)

**Sec. 1-20.2 Drug and alcohol abuse policy training for each officer and employee.**

(a) Each city officer and employee shall receive training of the highest standards on the city's drug and alcohol abuse policy by July 1, 2000, in accordance with this section.

- (1) An officer or employee who enters city employment after July 1, 1998 shall receive the training during the orientation provided upon entering employment.
- (2) An officer who enters city service, other than employment, after July 1, 1998 shall receive the training within the one-month period following entrance into service.
- (3) An officer or employee who is in city employment or service on July 1, 1998 shall receive the training within the two-year period following that date.
- (4) For the duration of city employment or service after the training described in subdivision (1), (2), or (3), an officer or employee shall receive follow-up and/or refresher training as deemed necessary by the department of personnel.

(b) The department of personnel shall be responsible for scheduling and enrolling each officer or employee for the training on the city's drug and alcohol abuse policy.

(c) The department of personnel shall be responsible for providing the training on the city's drug and alcohol abuse policy to make officers and employees aware of:

- (1) The policy;
- (2) What constitutes drug and alcohol abuse;

- (3) The adverse effects of drug use and alcohol misuse on an individual's health, work and personal life; and
  - (4) The signs and symptoms of an alcohol or drug problem (the employee's or a co-worker's).
- For management or supervisory officers or employees, the training required under this section shall be integrated with that required under Section 1-20.3.
- (d) (1) In addition to the training provided in subsection (c), city drivers subject to 49 CFR Part 382 shall be provided a copy of the information and materials specified in 49 CFR Section 382.601(b) prior to their engaging in any safety-sensitive function. This requirement shall be deemed to have been met for officers and employees who were provided the materials and information required under 49 CFR Section 382.601 prior to July 1, 1998.\* This information and these materials shall also be provided to the exclusive bargaining representatives of any such officers or employees.
  - (2) The department of personnel may, in addition to the materials and information required to be provided under subdivision (1), provide additional materials or information under a statute, ordinance, rule, regulation, administrative directive or collective bargaining agreement, however, any materials or information not required to be provided under 49 CFR Part 382 shall expressly state the basis on which the materials or information is provided and shall state that it is not provided pursuant to 49 CFR Part 382.

(Added by Ord. 97-70)

**Sec. 1-20.3 Training program for management or supervisory officers and employees.**

- (a) Each management or supervisory officer or employee of the city shall complete a training program on the city's alcohol and drug abuse policy. The program shall provide each management or supervisory officer or employee with training to properly:
  - (1) Identify officers or employees under his or her management or supervision who exhibit the signs and symptoms of an alcohol or a drug problem;
  - (2) Refer employees identified under subdivision (1) to city, state, community or medical resources available for evaluation, diagnosis, counselling and rehabilitation of persons with drug and alcohol dependency or addiction, as appropriate, including the names, addresses, and telephone numbers of substance abuse professionals, and of counselling and rehabilitation programs; and
  - (3) Inform employees identified under subdivision (1) as to disciplinary and other measures that may be taken if adverse behavior believed to be the result of the abuse of drugs and/or alcohol is not corrected.
- (b) The training program shall include information on alcohol and drug misuse and indicators of probable misuse.
- (b) Management or supervisory officers or employees having managerial or supervisory control over city officers or employees who are subject to city alcohol and/or drug- testing policies shall, in addition to the training provided pursuant to subsection (a):
  - (1) Receive training in the alcohol- and/or drug-testing policies applicable to the officers or employees under their management or supervision; and
  - (2) Receive training in the procedures and requirements for documentation of observations which may permissibly lead to an alcohol or drug reasonable suspicion test.
- (c) Management or supervisory officers or employees having managerial or supervisory control over city officers or employees who are subject to 49 CFR Part 382 shall, in addition to the training pursuant to subsection (b), receive the materials and information enumerated in 49 CFR Section 382.601(b) and any additional training deemed necessary by the director of personnel relating to alcohol- and drug-testing policies applicable to the officers and employees subject to 49 CFR Part 382.
- (d) The training program provided under this section shall be formulated and provided by the department of personnel.
- (e) (1) For management or supervisory officers or employees who are in a management or supervisory position on July 1, 1998,\* the applicable training program shall be provided within one year of July 1, 1998.\*
- (2) For persons elected or appointed to city management or supervisory positions following July 1, 1998,\* but who are not subject to subdivision (3) or (4), the training program described in subsection (a) shall be provided within one year of the person's election or appointment to the position.
- (3) For city management or supervisory officers or employees appointed to positions with management or supervisory control over city officers or employees subject to the city's alcohol- and/or drug-testing policies following July 1, 1998,\* but who are not subject to subdivision (4), the training program described in subsection (b) shall be provided within 60 days of the date of the appointment.
- (4) For city management or supervisory officers or employees appointed to positions with management or supervisory control over city officers or employees who are subject to alcohol- and/or drug-testing under 49 CFR Part 382, the training program described in subsection (c) shall be provided within 60 days of the date of the appointment.
- (5) For the duration of the management or supervisory officer's or employee's employment in the managerial or supervisory position, after the training described in subdivision (1), (2), (3) or (4), whichever applies, the management or supervisory officer or employee shall receive follow-up and/or refresher training as deemed necessary by the department of personnel.

(Added by Ord. 97-70)

[\*Editor's Note: "July 1, 1998" is substituted for "the effective date of this ordinance."]

**Article 21. City Advertisements**

**Sections:**

**1-21.1 Definitions.**

- 1-21.2 Disclosure required.**
- 1-21.3 Penalty.**

**Sec. 1-21.1 Definitions.**

For the purposes of this article:

“Advertisement” includes any communication paid for in whole or in part with city funds, and publicly distributed to support, advocate for, or inform the public about a city project, program, action, or legislation. The term does not apply to notices of public meetings, notices of public hearings, notices of real property tax assessments and other legal notices required by ordinance or other law. A radio or television broadcast that differs in content from day-to-day or program-to-program shall be treated as a separate advertisement for each day or program, respectively.

“City employee” means the same as is defined in Section 13-101 of the 1973 Revised Charter of the City and County of Honolulu, as amended.

“City funds” include all funds appropriated in the city’s executive operating and capital budgets and its legislative budget and include funds obtained by the city from the state or federal government.

“City officer” means the same as is defined in Section 13-101 of the 1973 Revised Charter of the City and County of Honolulu, as amended.

“Publicly distributed” means to make available to the public by broadcasting on television or radio, by publishing in a newspaper, magazine, periodical or other form of mass print media, or by bulk mailing a city publication.

(Added by Ord. 08-18)

**Sec. 1-21.2 Disclosure required.**

- (a) No city officer, employee, or consultant, contractor, subconsultant or subcontractor to the city shall submit or cause to be submitted any advertisement without including the following statement in the advertisement: “Paid for (or paid in part) by the taxpayers of the City and County of Honolulu.” For radio advertisements, the statement may be altered to state: “Paid for (or in part) by city taxpayers.”
- (b) If an advertisement is in printed or published form, the statement required in subsection (a) shall be displayed in a prominent location in the advertisement, and be of sufficient type size to be clearly readable by the recipient or audience of the advertisement. If the advertisement is broadcast on the radio, the statement shall be stated orally at the end of the advertisement.

(Added by Ord. 08-18)

**Sec. 1-21.3 Penalty.**

Any person who willfully violates any provision of this article shall be subject to the penalty provided in Section 1-3.1.

(Added by Ord. 08-18)

**Article 22. Hawaiian Language Signs of the City and County of Honolulu**

**Sections:**

- 1-22.1 Definitions.**
- 1-22.2 Hawaiian language on city signs.**

**Sec. 1-22.1 Definitions.**

As used in this article:

“City” means the government of the City and County of Honolulu.

“City sign” means a public sign as defined under Section 21-7.20 that was prepared by or for the city.

“Kahakō” means a diacritical mark, which is placed above a vowel to indicate a long sound or phonetic value in pronunciation.

“Okina” means a diacritical mark indicating an interruption of the breath stream during speech.

(Added by Ord. 08-21)

**Sec. 1-22.2 Hawaiian language on city signs.**

All city signs that include Hawaiian language or Hawaiian names shall use proper Hawaiian spelling, including kahakō and ‘okina. (Added by Ord. 08-21)

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**UNITED STATE COURT OF APPEALS  
NINTH CIRCUIT**

CHRISTOPHER BAKER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LOUIS KEALOHA, as an individual and )  
 in his official capacity; )  
 CITY AND COUNTY OF HONOLULU; )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )  
 )  
 \_\_\_\_\_ )

No. 12-16258  
CASE NO. CV 11-00528  
NOTICE OF SUPPLEMENTAL  
AUTHORITY

**Notice of Supplemental Authority**

COMES NOW THE PLAINTIFF-APPELLANT, Christopher Baker, submits this Notice of Supplemental Authority. This Notice of *Chapter 1 Article 9 of the Revised Ordinances of Honolulu* (attached) is applied to this Court's 11/29/2012 order, directing Mr. Baker to discuss the Monell Doctrine. Moreover, it is in furtherance of the proposition that via policy, law, and custom the City and County of Honolulu is responsible for the matters at issue; And who's official (Chief Kealoha) has discretion and final review of these matters establishing Monell liability. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978). In pertinent part,

Article 9. Authority of Executive Agency to Adopt Rules and Regulations

Sections:

1-9.1 Adoption of rules and regulations.

1-9.2 Format of rules and regulations.

Sec. 1-9.1 Adoption of rules and regulations.

The head of any executive agency whose power or function as prescribed by law directly affects the public, may promulgate rules and regulations having force and effect of law pursuant to HRS Chapter 91, setting forth procedures that are necessary for such agency in dealing with the public concerning such power or function. (Sec. 1-10.1, R.O. 1978 (1983 Ed.))

Sec. 1-9.2 Format of rules and regulations.

(a) The department of the corporation counsel shall prescribe a uniform format for the preparation and publication of rules and regulations of departments and agencies of the city. The uniform format shall provide that each rule or regulation published shall be accompanied by a reference to the authority pursuant to which the rule or regulation has been adopted, the law

implemented by the rule or regulation, if any, and the effective date of the rule or regulation. The uniform format shall further provide that whenever possible, applicable law should be incorporated by reference and not be reprinted in the rule or regulation.

Respectfully submitted this 4th day of December, 2012

s/ Alan Beck

Alan Beck (HI Bar No. 9145)

**CERTIFICATE OF SERVICE**

On this, the 4<sup>th</sup> day of December, 2012, I served the foregoing pleading by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 4<sup>th</sup> day of December, 2012.

/

s/ Alan Beck

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Alan Beck (HI Bar No. 9145)