

## CHAPTER 12

### IMPROVEMENTS BY ASSESSMENTS

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**CHAPTER 12****IMPROVEMENTS BY ASSESSMENTS****Article 1. General Provisions.****Section 12-1. Definitions.**

(a) As used in this chapter:

- (1) "Assessment unit" means, with respect to a special assessment, a subdivided parcel of land and/or condominium unit that will be subject to such special assessment; provided, however, that every assessment unit shall have a unique tax map key number.
- (2) "Condominium unit" means an "apartment" as defined in section 514A-3, Hawai'i Revised Statutes, and may include, if so determined by the council, the common elements and/or limited common elements appurtenant thereto, as set forth in the declaration of condominium property regime or horizontal property regime which created such apartment.
- (3) "Cooperating department" means a department of the County, other than the responsible department, that undertakes or supervises the construction and installation of a portion of the special improvements for an improvement district.
- (4) "Cost" means the cost, either estimated or actual, as the case may be, of the improvements to be opened, constructed or improved in proceedings taken pursuant to this chapter for which assessments are to be levied. There may be included within the definition of "cost," amounts for construction contingencies, bond discounts, reserve funds, capitalized interest, and incidentals.
- (5) "Improvement district" means any contiguous or noncontiguous area within the County which has been designated by the council as an improvement district for the purposes of this chapter.
- (6) "Incidentals" means expenses in carrying out proceedings pursuant to this chapter for:
  - (A) Preparation of maps, notices, and other documents;
  - (B) Posting, mailing and publication costs;
  - (C) Preparation and printing of bonds, bond registers and transfer books;
  - (D) Fees of financial, legal, engineering and surveying consultants; and
  - (E) Such other administrative or miscellaneous expenses which relate directly to the proceedings.
- (7) "Owner" of an assessment unit means the person to whom the real property tax for such assessment is assessed, as shown on the real property tax assessment roll, regardless of whether such person is exempt from the payment of such tax.

- (8) “Premium” means:
- (A) An amount payable by a property owner at the time the owner makes an advance payment of unpaid installments of the assessment in accordance with the provisions of section 12-35 (Advance payment of assessment installment) which amount is in addition to the unpaid principal amount the owner’s assessment and the interest thereon to the next date for the payment of installments;
  - (B) An amount payable to the holder of a bond issued pursuant to this chapter which is called by the director of finance for payment before maturity in accordance with the provisions of section 12-54 (Payment of bonds), and which is in addition to the face amount of such bond and the interest thereon payable to such bondholder; or
  - (C) An amount paid by the purchaser of the bonds in excess of the par value of the bonds.
- (9) “Responsible department” means: (a) in the case of a water system improvement district, the department of water supply of the County; (b) in the case of a sewer system improvement district, the department of environmental management of the County; and (c) in all other cases, the department of public works of the County or, if applicable, such other department of the County as shall have primary responsibility for undertaking or supervising the construction and installation of the special improvements for the improvement district in question.
- (10) “Responsible director or manager” means the director or manager of the responsible department.
- (11) “Special improvement,” “improvement,” “the making of a special improvement,” “make any special improvement” and equivalent expressions include any one or any combination of the following:
- (A) The establishment, opening, extension, widening, or altering of any street, alley, or other highway or sidewalk;
  - (B) The grading, paving, curbing, or otherwise improving of the whole or any part of any existing public street, alley, or other highway or sidewalk;
  - (C) The construction of a storm drainage facility;
  - (D) The construction of a street lighting system;
  - (E) The construction of a water system;
  - (F) The construction and installation of underground or overhead utility facilities including gas, electrical, telephone or television facilities, and the removal, relocation, replacement or reconstruction thereof;
  - (G) The establishment, extension, or construction of public off-street parking facilities, pedestrian malls, parks, playgrounds, beach areas, or other public recreational areas and facilities;
  - (H) Improvements related to the foregoing, and to otherwise improve any of the foregoing to an extent exceeding maintenance or repair thereof;
  - (I) Any other public improvement, which will specially benefit the assessment units to be assessed.

(12) “Sewer system improvement district” means an improvement district in which the improvements to be made are exclusively those to construct a sewer system or upgrade an existing sewer system, including the restoration of roadways or other facilities incidental to such construction or upgrading.

(13) “Storm drainage facility” includes “sanitary sewerage system.”

(14) “Water system improvement district” means an improvement district in which the improvements to be made are exclusively those to construct a water system or upgrade an existing water system, including the restoration of roadways or other facilities incidental to such construction or upgrading.

(1983 CC, c 12, art 1, sec 12-1; am 1990, ord 90-127, sec 1; am 1995, ord 95-22, sec 2; am 2002, ord 02-82, sec 2; am 2011, ord 11-66, sec 2.)

**Section 12-2. Method; authority to issue bond.**

(a) Whenever in the opinion of the council it is desirable to make any special improvement in any improvement district, the special improvement shall be made and done under the provisions of this chapter. The cost of the special improvement including the cost of acquiring (whether prior to or after the commencement of the proceedings for such improvements) any new land therefor, shall be assessed against the assessment unit specially benefited on the basis of any method or methods which the council finds assesses the assessment unit according to the special benefits conferred thereon, which may include, without limitation, any of the following:

- (1) Frontage;
- (2) The area of the assessment unit;
- (3) The permissible number of dwelling units permitted on each parcel under applicable zoning provisions;
- (4) The amount of water allotted to each assessment unit;
- (5) Minimum required sewer capacity of the assessment unit;
- (6) Traffic generation/usage for road improvements;
- (7) The square footage of buildings and/or other improvements; or
- (8) Any method that the council finds assesses said assessment units according to the special benefits conferred on said assessment units or any combination thereof.

(b) The County may issue and sell bonds to provide the funds for such improvements, which bonds shall be secured by such assessments as a lien upon the assessment units assessed. For such purpose, the council may create, define and establish improvement districts, all according to the provisions of this chapter.

(1983 CC, c 12, art 1, sec 12-2; am 1990, ord 90-127, sec 1; am 2002, ord 02-82, sec 3.)

**Section 12-3. Repealed.**

(1983 CC, c 12, art 1, sec 12-3; rep 1990, ord 90-127, sec 2.)

**Section 12-4. Improvements outside designated districts.**

- (a) Improvements which may be outside the improvement district boundaries but which confer special benefits on assessment units within the improvement district may be included as part of the special improvements in the improvement district and the cost thereof shall be assessed as provided in this chapter.
- (b) The cost of improvements described in section 12-4(a) which benefit more than one improvement district shall be apportioned among the affected improvement districts according to the special benefits conferred upon the assessment units within said improvement districts.

(1983 CC, c 12, art 1, sec 12-4; am 1990, ord 90-127, sec 3; am 2002, ord 02-82, sec 4.)

**Section 12-5. Lands exempt from taxation; costs.**

- (a) Whenever any public land, or any land by law exempted from assessments of the character provided for in this chapter, forms part of any improvement district or fronts upon or is situated with relation to any special improvement or area to be so improved in such manner that such land would, if privately owned or not exempt from such assessment, be subject to assessment, the council shall, nevertheless, without assessing such public or exempted land for any part of the cost of such improvements, by general ordinance appropriate and pay toward such improvements out of general revenues the portion of the cost thereof which would otherwise be assessable against the same in lump sum, or, at the election of the council, in such equal installments with such interest thereon as the council shall determine. In the event, however, any part of such exempt land, except public lands, may be required for right-of-way or easement purposes within such improvement districts the value thereof shall be chargeable to the improvement district, and upon acquisition the owner shall be compensated therefor in the following manner:
  - (1) Where the value of the part taken together with any severance damages exceeds the portion of the cost of the improvements which would otherwise be assessable against the exempt land, the County shall pay the difference to the owner; or
  - (2) Where the value is less than the portion of the cost of improvements which would otherwise be assessable against such exempt lands, the value of the land shall be deducted therefrom and the County shall pay the balance of the assessment as provided herein.
- (b) With respect to any such proposed improvement where any part of the cost is to be borne by the County, the council shall have the same right of approval or protest as though the County were the private owner of the public or exempted land so involved. As to such expenditure for public and exempt lands, the County shall be entitled to be reimbursed out of State revenues by appropriations to be made from time to time by the legislature to the extent of fifty percent of all assessments regularly apportioned against persons, corporations or entities, which are part of any improvement district or frontage improvement and are exempted by law from

the payment of such assessments. The County shall be entitled to be likewise reimbursed for the full amount of assessments regularly apportioned against public lands which are a part of any improvement district or frontage improvement, which public lands are owned in fee simple by the United States, or by the State, and which are not set aside for schools maintained by the County, for County parks, or for other County purposes or for street areas or frontages; provided, that in case any land exempted by law from assessments as herein provided, other than public land, or any part thereof, is sold or leased after the establishment of a frontage improvement or an improvement district, the grantee in the one case and the lessor in the other, shall assume the payment of assessments from the date of such sale or lease in the same manner as if the property had not been exempted from assessments and as if assessments apportionable against the property had been paid in installments to such date of sale or lease. All payments received from such grantee or lessor, as the case may be, shall be paid into the permanent improvement fund.

- (c) Nothing in this section shall be taken to prejudice any rights of the State to reimbursement from the United States for assessments herein assumed by the State, but the latter shall be subrogated to the rights of the County on such assessments so assumed.

(1983 CC, c 12, art 1, sec 12-5.)

**Section 12-6. Powers reserved to council.**

Any provision of law to the contrary notwithstanding, the council reserves the following powers over any proposed improvement district, whether County-initiated under section 12-10 or initiated by petition of owners under sections 12-14, 12-15, 12-16, or otherwise.

- (a) If, for any reason whatsoever, the improvement district bonds authorized under article 4 are not sold or cannot be sold to any acceptable purchaser within a reasonable time, then the council shall have the power and authority to terminate the entire improvement district project, or any part thereof. In the event that the project is terminated, in the case of petitions by owners under sections 12-14, 12-15 and 12-16 hereof, the petitioners shall be responsible for all costs incurred by the County for such improvement district. The County may assure such repayment by requiring reasonable deposits therefor.
- (b) In addition to the foregoing, at any time during the proceedings of any improvement district proposal up to and including the adoption of the assessment ordinance under section 12-29, the council shall have the power and authority to terminate the entire improvement district project, or any part thereof, if it determines that the improvement district project is not in the public interest.
- (c) In addition to the foregoing, at any time during the proceedings of any improvement district proposal up to and including the adoption of the assessment ordinance under section 12-29 hereof, the council shall have the power and authority to require the inclusion of costs of additional improvements including off-site improvements such as roads, water, sewers, drainage, which may be outside

the improvement district boundaries but which service the improvement district. If such costs are to be so included and said inclusion increases the proposed assessment of any owner, the council shall give appropriate notice and conduct public hearings as provided in sections 12-10, 12-27 and 12-28 (as applicable) and the appropriate resolutions and ordinances shall be amended accordingly.

- (d) The council may allow as a credit against any improvement district assessment, any payment made by an owner to the County which is used to pay for costs of that improvement district, whether such payment is made before or after the creation of said improvement district. Provided, however, that such credit shall not create any obligation of the County to create or continue any improvement district, nor shall such credit impair or otherwise affect the powers of the council in this chapter.

(1983 CC, c 12, art 1, sec 12-6; am 1990, ord 90-127, sec 4.)

**Section 12-7. Costs advanced and borne by owners and County.**

- (a) The County or an affected owner of an assessment unit may advance costs, including incidentals, for improvement districts, whether before or after the commencement of proceedings for creation of improvement districts and, to the extent that said costs are included in the cost of improvements for said improvement districts, the council may direct partial or full reimbursement to the County or such owner for such costs from improvement district funds. Upon a request by an affected owner of an assessment unit, the director of finance may apply all or part of any such refund toward payment of improvement district assessments or installments thereof. The County may expend such funds to the same extent as if it advanced its own funds for that purpose. If the improvement district is not created or if it is terminated by the council under section 12-6, said owner shall not be entitled to any refund or credit, except as authorized by the council.
- (b) For main or general thoroughfares, the County may assume and pay out of all available funds, the costs of improvements thereto which: (1) exceed the special benefits conferred on the assessed assessment units or (2) the council finds should not be covered by special assessments. As used in this section "main or general thoroughfare" means a street or highway that is used as an arterial highway between substantially different or naturally separated localities or sections of the County.

(1983 CC, c 12, art 1, sec 12-7; am 1976, ord 241, sec 2; am 1990, ord 90-127, sec 4; am 2002, ord 02-82, sec 5.)

**Section 12-8. Limitation on time to sue.**

Any objections to any actions undertaken pursuant to this chapter shall be governed by section 46-80.5, Hawaii Revised Statutes.

(1983 CC, c 12, art 1, sec 12-8; am 2002, ord 02-82, sec 6.)



**Section 12-9. Ratification and validation.**

The levy of all special assessments, all outstanding improvement bonds of the County payable from special assessments, and all acts and proceedings heretofore had or taken or purportedly had or taken, by or on behalf of the County under law or under color of law preliminary to and in the authorization, execution, sale, issuance, and payment (or any combination thereof) of all such bonds are hereby validated, ratified, approved and confirmed, including but necessarily limited to the terms, provisions, conditions, and covenants of any resolution and ordinance appertaining thereto, the redemption of improvement district bonds before maturity and provisions therefor, and the use of the proceeds of such assessments and bonds, notwithstanding any lack of powers, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities, other than constitutional, in such assessments, bonds, acts and proceedings, and in such authorization, execution, sale, issuance and payment, including without limiting the generality of the foregoing, such acts and proceedings heretofore not been levied nor purportedly levied and issued nor purportedly issued. Such outstanding assessments and bonds are and shall be, and such assessments and bonds heretofore not levied nor purportedly levied and issued nor purportedly issued shall be, after such levy or issuance, binding, legal, valid, and enforceable obligations in accordance with their terms and their authorizing proceedings, subject to the taking or adoption of acts and proceedings heretofore not had nor taken, but required by and in substantial and due compliance with laws appertaining thereto.

(1983 CC, c 12, art 1, sec 12-9.)

**Article 2. Procedure.****Section 12-10. Initiation by council; study of proposed improvement; adoption of improvement; hearing**

(a)

- (8) All necessary plans and other data, details, and specifications for the improvements and any other matters or details intended to apply thereto. The report of the responsible director or manager, when so furnished and filed with the council, shall not be acted upon until one week has elapsed from the date of the filing of the report with the council.
- (b) If the proposed improvement district includes the construction and installation of improvements to be undertaken or supervised by a cooperating department, the responsible director or manager shall obtain from the cooperating department preliminary plans and estimates for such cooperating department's proposed improvements, and the responsible director or manager shall furnish the cooperating department with such preliminary plans of the proposed improvements, other than those of the cooperating department, as will enable the cooperating department to make its plans and estimates. The responsible director or manager shall incorporate such preliminary plans and estimates of the cooperating department in the report to the council.
- (c) Thereafter the council may, by resolution requiring one reading for its adoption, propose the making of an improvement or improvements, specifying:
  - (1) The special improvements to be opened, constructed, or improved;
  - (2) The area, owners, so far as known, and general description and location of new land to be acquired, if any;
  - (3) The materials proposed to be used;
  - (4) The proposed assessment unit and method of assessment including the minimum number of installment payments to be proposed;
  - (5) The maximum term of assessment bonds to be issued to represent unpaid installments;
  - (6) The maximum rate of interest to be borne by the bonds;
  - (7) The maximum premium required to be paid on the advance payment of installments or the call and redemption of any bond prior to its maturity;
  - (8) The maximum amount of the reserve fund either as set forth in the report of the responsible director or manager or as otherwise determined by the council;
  - (9) The general boundaries of the district or frontage, subdistricts and zones to be assessed; and
  - (10) The maximum estimated units of assessment.

The resolution shall refer to and incorporate by reference such surveys, plans, maps, and other data reported by the responsible director or manager as are approved by the council. The resolution shall also fix a date of public hearing upon the proposed improvement, which date shall be not less than fifteen days after the first publication of notice thereof in at least one newspaper of general circulation in the County.
- (d) The council may adopt the plans and estimates so furnished by any cooperating department and incorporated in the report of the responsible director or manager. If the plans and estimates of a cooperating department are adopted by the council, the plans and estimates shall be referred to and incorporated by reference in such resolution.

- (e) After the adoption of the resolution, the County clerk shall:
- (1) Cause a notice of the public hearing to be published twice a week for two successive weeks (four publications in all) in at least one newspaper of general circulation in the County, giving notice, generally, to all owners of assessment units proposed to be assessed or land to be acquired and to all others interested in the general details of the proposed improvements as adopted by the council and stating the time and place of public hearing and where the resolution and reports and other data may be seen and examined prior to the hearings;
  - (2) Post copies of the notice described in the preceding paragraph at least ten days prior to the hearing at a public place in the district in which the proposed improvement district is located; and
  - (3) Mail a notice of public hearing to all owners of the assessment units proposed to be assessed at least two weeks prior to the hearing. The notice to be mailed shall contain:
    - (A) The material contained in the published and posted notices;
    - (B) A description of the assessment unit of such owner set forth in such manner as to enable such owner to identify the assessment unit;
    - (C) A statement that the assessment unit described on said notice is proposed to be assessed to pay for a portion of the cost of the proposed improvements;
    - (D) A statement that the testimony of all interested persons and owners of assessment units for or against the establishment of the district, the extent of the district, and the levy of the special assessment will be heard; and
    - (E) A statement that a protest against making all or part of the proposed improvements or against the methods by which such assessments are to be made, or the inclusion of certain costs therein must be submitted in writing, in accordance with section 12-12 of this chapter, to be considered by the council.
- (f) The clerk of the County shall file with the council on or before the hearing an affidavit by the clerk of the County attesting that the clerk of the County completed the publication, posting, and mailings described in the preceding section 12-10(e) in accordance with the requirement thereof; provided, however, that the failure of the clerk to timely file such affidavit shall not invalidate the proceedings held thereafter.
- (g) Any failure to post, mail, or receive the notice described above, shall not invalidate the proceedings held thereafter.
- (h) No improvement district shall be approved unless:
- (1) The assessed valuation for taxation purposes of the assessment units to be improved is at least twice the estimated costs of the proposed improvement; or

(2)

(i) No improvement district shall be approved unless the council finds that such improvement is in the public interest.

(1983 CC, c 12, art 2, sec 12-10; am 1984, ord 84-4, sec 1; am 1990, ord 90-127, sec 5; am 1995, ord 95-22, sec 3; am 2001, ord 01-108, sec 1; am 2002, ord 02-82, sec 7; am 2011, ord 11-66, sec 3.)

**Section 12-11. Report of responsible director or manager.**

In preparing the report required by section 12-10, the responsible director or manager may consult with the director of finance or with such financial consultant as has been specially employed by the council to assist in the proceedings or who may otherwise be available to the council, at the direction of the council. Upon the written advice and recommendation of the director of finance or of such a financial consultant, the responsible director or manager may include such sums as that director or manager deems proper for reserve funds, bond discount allowances, and construction contingencies in determining that director's or manager's estimate of the project cost and the amount to be assessed therefor.

(1983 CC, c 12, art 2, sec 12-11; am 1995, ord 95-22, sec 4; am 2001, ord 01-108, sec 1; am 2011, ord 11-66, sec 4.)

**Section 12-13. Waiver of objections.**

All objections to any act or proceeding occurring prior to the time within which such objections are permitted to be filed in relation to the work, not made in writing and in the manner and at the time specified, shall be waived if the notices required by section 12-10 have been actually mailed, published and posted as required by law.

(1983 CC, c 12, art 2, sec 12-13.)

**Section 12-14. Petition by sixty percent of owners.**

If the owners of not less than sixty percent of the frontage upon any street, alley, or highway designated by them or of sixty percent of the area of land designated by them as a proposed improvement district, file with the council a petition duly acknowledged by the owners requesting the construction of special improvements, together with the surveys, maps, plans and other preliminary data and estimates mentioned in section 12-10, in the case of a proceeding initiated by the council, the council may reject or accept the petition. If the petition is accepted, the council shall proceed in the same manner as though the plan for such improvements had been initiated on its own motion, and the cost of the preliminary surveys, maps and other data, if not in excess of the estimate therefor stated in the petition, shall be deemed part of the cost of the improvement; provided, that upon such petition the council shall not have the power to abandon the proceedings or make any change or modification of the plans or the details or specifications for the proposed improvements without the written and duly acknowledged consent of the owners of not less than sixty percent of the frontage or area of the land to be assessed; except that the council may decline to acquiesce in or may modify any part of the plan which contemplates the payment by the County of any part of the cost of acquiring new land or of any part of the cost of improving any main or general thoroughfare, and in such event, if the owners of not less than sixty percent of the frontage or property to be assessed agree in writing to the change or modification, the council shall be bound to proceed with the plan as so modified.

(1983 CC, c 12, art 2, sec 12-14; am 1976, ord 241, secs 1 and 3; am 1984, ord 84-4, sec 2.)

**Section 12-15. Petition by twenty percent of owners.**

- (a) If the owners of not less than twenty percent of the frontage upon any street, alley or highway designated by them or of twenty percent of the area of land designated by them as a proposed improvement district, file with the council a petition duly acknowledged by the owners requesting the construction of special improvements, together with the surveys, maps, plans and other preliminary data and estimates mentioned in section 12-10, the council may reject or accept the petition. If the council accepts the petition, it shall proceed in the manner hereinafter provided. The council shall act on the petition provided:
- (1) The petition of twenty percent of the owners includes the signatures of at least fifty percent of the resident owners residing in the proposed improvement district; and
  - (2) A state of emergency is found to exist by the council that requires the formation of the improvement district.
- (b) The cost of the preliminary surveys, maps and other data shall be deemed part of the cost of the improvement provided fifty-one percent of the owners of the improvement district hereinabove described do not object to the improvement district. If fifty-one percent or more of the owners involved in the improvement

district oppose the improvement district, all such cost of the preliminary surveys, maps and other data shall be borne by the County as if the proceeding had been initiated by the council in accordance with section 12-10.

- (c) Upon such petition and prior to the hearing thereon, the council shall, at its option, have the power to abandon the proceedings or make any change or modification of the plans or the details or specifications for the proposed improvements without the written consent of the petitioning owners of the frontage or area of the land to be assessed. With regard to the petition, the council may at any time decline to acquiesce in or may modify any part of the plan which contemplates the payment by the County of any part of the cost of acquiring new land or of any part of the cost of improving any main or general thoroughfare.
- (d) Upon receipt of the petition, the council shall by resolution requiring not more than one reading for its adoption, direct the responsible director or manager:
  - (1) To investigate and report to the council:
    - (A) Preliminary data concerning the special improvements proposed to be opened, constructed, or improved;
    - (B) The general character and extent of any improvement to be proposed;
    - (C) The proposed assessment unit and method of assessment;
    - (D) Whether any new land will be necessary to be acquired, and the estimated cost thereof and the proportion of the cost which should be borne by the County;
    - (E) The materials recommended to meet the conditions of the improvement;
    - (F) The boundaries of the proposed improvement district and any subdistricts or zones therein as to which different portions of the cost shall be charged; and
    - (G) The estimated cost of the improvement, the portions of the cost to be borne by the County, and the portions of the cost to be specifically assessed against the assessment units specially benefited with the maximum unit of assessment to be made; and
  - (2) To prepare and furnish all necessary drawings and other data, details, and specifications for the improvements and any other matters or details intended to apply thereto.

The report when so furnished and filed with the council shall not be acted upon until one week has elapsed from the date of the filing of the same.

- (e) If the proposed improvement district includes the construction and installation of improvements to be undertaken or supervised by a cooperating department, the responsible director or manager shall obtain from the cooperating department preliminary plans and estimates for such cooperating department's proposed improvements, and the responsible director or manager shall furnish the cooperating department with such preliminary plans of the proposed improvements, other than those of the cooperating department, as will enable the cooperating department to make its plans and estimates. The responsible director or manager shall incorporate such preliminary plans and estimates of the cooperating department in the report to the council.

- (f) The council may, by resolution requiring one reading for its adoption, propose the making of an improvement or improvements specifying:
- (1) The streets, storm drainage, sanitary sewerage system, water system or street lighting system, or combination thereof, to be opened, constructed, or improved;
  - (2) The area, owners, so far as known, and general description and location of new land to be acquired, if any;
  - (3) The materials proposed to be used;
  - (4) The proposed unit of assessment and method of assessment including the minimum number of installment payments to be proposed;
  - (5) The maximum term of assessment bonds to be issued to represent unpaid installments;
  - (6) The maximum rate of interest to be borne by the bond;
  - (7) The premium required to be paid on the advance payment of installments for the call and redemption of any bond prior to its maturity;
  - (8) The amount of the fund either as set forth in the report of the responsible director or manager or as otherwise determined by the council;
  - (9) The general boundaries of the district or frontage, subdistricts and zones to be assessed; and
  - (10) The maximum amount estimated to be assessed against a unit of assessment.
- (g) The council may adopt the plans and estimates so furnished by a cooperating department and incorporated in the report of the responsible director or manager. If the plans and estimates of a cooperating department are adopted by the council, the plans and estimates shall be referred to and incorporated by reference in such resolution. The resolution shall refer to and incorporate by reference such surveys, plans, maps and other data reported by the responsible director or manager as are approved by the council. The resolution shall also fix a date of public hearing upon the proposed improvement, which date shall be not less than forty-five days after the first publication of notice thereof in a newspaper of general circulation in the County. The hearing shall provide owners of assessment units within the improvement district with a reasonable opportunity to object or approve in writing of the proposed improvement.
- (h) After the adoption of the resolution, the County clerk shall:
- (1) Cause a notice of the public hearing to be published twice a week for two successive weeks (four publications in all) in at least one newspaper of general circulation in the County, giving notice, generally, to all owners of assessment units proposed to be assessed or acquired and to all others interested in the general details of the proposed improvements as adopted by the council and stating the time and place of public hearing and where the resolution and reports and other data may be seen and examined prior to the hearing;
  - (2) Post copies of the notice described in the preceding paragraph at least ten days prior to the hearing at a public place in the district in which the proposed improvement district is located; and

- (3) Mail a notice of public hearing to all owners of the assessment units proposed to be assessed at least two weeks prior to the hearing. The notice to be mailed shall contain:
  - (A) The material contained in the published and posted notices;
  - (B) A description of the assessment unit of such owner set forth in such manner as to enable such owner to identify the assessment unit;
  - (C) A statement that the assessment unit described on said notice is proposed to be assessed to pay for a portion of the cost of the proposed improvements;
  - (D) A statement that the testimony of all interested persons and owners of assessment units for or against the establishment of the improvement district, the extent of the improvement district, and the levy of the special assessment will be heard; and
  - (E) A statement that any protest, objection, or suggestion relating to the making of all or part of the proposed improvements or against the methods by which such assessment are to be made, or the inclusion of certain costs therein must be submitted in writing, in accordance with section 12-12 of this chapter, to be considered by the council.
- (i) The clerk of the County shall file with the council on or before the hearing an affidavit by the clerk of the County attesting that the clerk of the County completed the publication, posting, and mailings described in the preceding section 12-15(h) in accordance with the requirement thereof; provided, however, that the failure of the clerk to timely file such affidavit shall not invalidate the proceedings held thereafter. Any failure to post, mail, or receive the notice described above shall not invalidate the proceedings held thereafter.
- (j) All notices referred to in this section shall also contain a provision providing that if the owner does not object in writing at or before the time of hearing, such inaction will be construed as a conclusive presumption that said owner does not object to the proposed improvement and that the improvement district may be put into effect unless fifty-one percent of the owners who will be assessed as a result of the improvement district object in writing at or prior to the time of hearing.
- (k) Should fifty-one percent or more of the owners of the assessment units affected by the improvement district fail to object prior to or at the hearing, the proposed improvement by assessment shall be approved by council passing a resolution requiring one reading for its adoption, provided, that no such improvement shall be approved unless:
  - (1) The assessed valuation for taxation purposes of the assessment units to be improved is twice the estimated cost of the proposed improvement; or



- (2) The council by resolution finds the appraised value of such assessment units in accordance with prevailing standards of appraisal and used by banks for loans thereon is twice the estimated cost of the proposed improvement and that such approval is in the public interest.

(l) This section shall apply only to subdivisions created prior to March 1, 1967. (1983 CC, c 12, art 2, sec 12-15; am 1995, ord 95-22, sec 5; am 2002, ord 02-82, sec 9; am 2011, ord 11-66, sec 5.)

**Section 12-16. Petition by owners of one hundred percent of frontage or area.**

- (a) If a petition is filed and is acknowledged by the owners of one hundred percent of the frontage upon any street, alley, or highway or of the area of land designated by them as a proposed improvement district, then the council may reject or accept the petition. If the petition is accepted, the council shall proceed in the same manner as though the plan for the improvement had been initiated on its own motion, except that it shall be unnecessary for the council to give, publish, mail, or post notices of the proposed improvements, as provided for in section 12-10. In the case of a petition acknowledged by the owners of one hundred percent of the frontage or area designated as an improvement district, section 12-12 shall be where inapplicable thereto, any other provision or section to the contrary notwithstanding. In the case the owners of one hundred percent of the frontage or area of land designated as a proposed improvement district consent in writing to the amount and apportionment of the proposed assessments for such improvements, it shall be unnecessary to give the notice or to hold the hearing specified by section 12-27 and the council may immediately proceed to fix the assessments in the manner provided by section 12-29.
- (b) No such improvement shall be approved by the council unless:
- (1) The assessed valuation for taxation purposes of the assessment units to be improved is twice the estimated cost of the proposed improvement; or
  - (2) The council by resolution finds the appraised value of such assessment units in accordance with prevailing standards of appraisal then used by banks for loans thereon is twice the estimated cost of the proposed improvement and that such approval is in the public interest.

(1983 CC, c 12, art 2, sec 12-16; am 2002, ord 02-82, sec 10.)

**Section 12-17. Determination by council.**

After the hearing provided in section 12-10, the council shall consider any protests, objections or suggestions which may have been made or filed and whether sufficient valid protests have been filed to compel it to abandon any part or all of the proposed improvement. If the council still has jurisdiction to continue it shall then proceed, determining whether or not the proposed improvement shall be made as proposed, or made with modifications or with changes in the total estimated costs or costs per assessment unit of the improvements set forth in the resolution adopted pursuant to section 12-10(c). In the latter event, modifications or changes may be made without

again giving notice of a hearing as provided in section 12-10; provided that such modifications or changes shall not materially alter the general character or plan so advertised or increase the total estimated costs or costs per assessment unit of the improvements by more than ten percent or as otherwise set forth in the resolution pursuant to section 12-10(c). No modification of or change in the plans and estimates furnished by the responsible department or cooperating department shall be made without the consent of such department.

(1983 CC, c 12, art 2, sec 12-17; am 2013, ord 13-125, sec 2.)

**Section 12-18. Resolution to define extent of improvement.**

If, after initial or further advertisement and hearing when no changes are made which will require further advertisement or hearing, the council determines to proceed with the improvements, it shall, by resolution requiring not more than one reading for its adoption:

- (1) Create, define, and establish the extent of the frontage improvement or the improvement district to be assessed;
- (2) Define the kind, extent, and general details of the proposed improvements;
- (3) Describe each parcel of land to be acquired, if any;
- (4) Declare the part or proportion of the cost of the improvement which is to be borne by the County;
- (5) Describe the assessment units and method of assessment;
- (6) Describe the kinds of materials to be used;
- (7) Direct the responsible director or manager as provided in section 12-19; and
- (8) If the proposed improvement includes construction or improvements of a water system, make requests as provided in section 12-20.

(1983 CC, c 12, art 2, sec 12-18; am 1995, ord 95-22, sec 6; am 2001, ord 01-108, sec 1; am 2002, ord 02-82, sec 11; am 2011, ord 11-66, sec 6.)

**Section 12-19. Responsible director or manager to prepare map showing improvements, details, plans and specifications.**

The council shall, by resolution required by section 12-18 direct the responsible director or manager to prepare a corrected map of the highways to be improved, showing the abutting lands or, of the improvement district showing the highways therein to be improved, or the special improvements to be constructed or improved, and showing the exact location of the improvements, together with final details, plans and specifications for the work, all in such form as will readily permit and encourage genuine competition between contractors in so far as the materials specified will permit of such competition. These maps, final details, plans, and specifications, as approved in accordance with the applicable policies and procedures of the responsible department or as otherwise approved by resolution adopted by the council, shall be used as the basis for the calling of bids and awarding of a contract for the work as provided in this chapter.

(1983 CC, c 12, art 2, sec 12-19; am 1995, ord 95-22, sec 7; am 2001, ord 01-108, sec 1; am 2011, ord 11-66, sec 7; am 2013, ord 13-125, sec 3.)

**Section 12-20. Plans and specifications from cooperating department.**

- (a) If the proposed improvement district includes the construction and installation of improvements to be undertaken or supervised by a cooperating department, the council shall by resolution required by section 12-18 request the cooperating department to furnish final detail plans and specifications for such improvements. The resolution shall also direct the responsible director or manager to furnish the cooperating department with such copies of the final surveys, maps and plans covering the proposed improvements, other than those of the cooperating department, as may be necessary to enable the cooperating department to prepare the final plans and specifications for its improvements.
- (b) The cooperating department shall furnish such final plans and specifications when requested, provided that the cooperating department may refuse to furnish such plans and specifications where funds for the amount the County is obliged to pay towards the contract price have not been included in the budget of the County for such year. The final plans and specifications so furnished by the cooperating department, as approved in accordance with the applicable policies and procedures of the coordinating department or as otherwise approved by resolution adopted by the council, shall be used as the basis for the calling of bids and awarding of a contract for such work.

(1983 CC, c 12, art 2, sec 12-20; am 2001, ord 01-108, sec 1; am 2011, ord 11-66, sec 8; am 2013, ord 13-125, sec 4.)

**Section 12-21. Land acquisition; procedure; cost; condemnation award.**

In case the improvements so determined under section 12-18 require the acquisition of any new land therefor, the council shall acquire the land before final award of the contract, either by deed, or other voluntary conveyance from the owners thereof, or it may, at its option, and in the name of the County cause condemnation proceedings to be brought to acquire the land. After the filing of the petition in such proceedings the final award of the contract may be made. If the cost of acquiring such land exceeds the estimate therefor, the council may provide for the excess cost by general appropriation. In the event that land has been acquired by condemnation under the provisions of chapter 101, Hawai'i Revised Statutes and in the award made on the condemnation there has been deducted from the compensation or damages otherwise payable to the landowner, any amount by reason of the fact that land of such landowner not sought to be condemned would be benefited by the construction of improvements proposed to be made after the condemnation, it shall be unlawful to make any assessments against such land under this chapter without having first credited against the amount for which land would otherwise have been assessed the amount that has been deducted in the award made on condemnation for benefits by reason of the construction of improvements proposed to be made after condemnation.

(1983 CC, c 12, art 2, sec 12-21.)

**Section 12-22. Construction of water system; inspections; costs borne by County.**

- (a) If any proposed special improvement includes the construction or improvement of a water system, the department of water supply shall maintain an inspector over the work to see that the plans and specifications which it has furnished have been complied with. After the work has been completed and accepted, the water system, pipes, conduits, hydrants, and other appurtenances for supplying or distributing water so installed shall constitute a part of the system of the department of water supply and shall at all times thereafter be used, operated and maintained by it as a part of its system.
- (b) If any proposed special improvement includes the construction or improvement of a water system, the department of water supply may assume and pay out of its funds available for such purpose, the cost of engineering, incidentals and inspection, not to exceed thirty-three and one-third percent of the total cost of the construction or improvement of such water system.

(1983 CC, c 12, art 2, sec 12-22.)

**Section 12-23. Repealed.**

(1983 CC, c 12, art 2, sec 12-23; rep 2002, ord 02-82, sec 12.)

**Section 12-24. Bidding; award of contract.**

- (a) The bid process for the construction of special improvements shall be administered by the responsible department in accordance with procedures and requirements applicable to County of Hawai'i projects and the state Procurement Code.
- (b) The bid specifications shall contain provisions that specify that the award of the contract will not occur until the improvement district is created and the necessary funds for construction are appropriated.
- (c) The responsible department may award the work as an entire contract or, in its discretion, make one or more contracts separately for the different kinds of work to be performed.

(1983 CC, c 12, art 2, sec 12-24; am 1990, ord 90-127, sec 7; am 1995, ord 95-22, sec 8; am 2002, ord 02-82, sec 12; am 2011, ord 11-66, sec 9.)

**Section 12-25. Repealed.**

(1983 CC, c 12, art 2, sec 12-25; rep 2002, ord 02-82, sec 12.)

**Section 12-26. Contract for off-site water facilities.**

- (a) Notwithstanding any other provisions in this chapter to the contrary, in the event that a portion of the improvements proposed to be made consist of water facilities outside of the boundaries of a proposed improvement district which in whole or in part will serve the improvement district, and if there exists with respect to such facilities an arrangement or agreement pursuant to which:
  - (1) The responsibility for the costs of such facilities in excess of a specified sum has been fixed;

- (2) The plans and specifications for such facilities will be approved by the department of water supply; and
  - (3) The plans and specifications will not be prepared nor the contract for construction of such facilities be ready to be advertised and awarded until a time or times beyond the time or times when the proceedings pursuant to this chapter for construction of the proposed improvements by assessment could otherwise be commenced and prosecuted; then the council may determine to proceed pursuant to this section.
- (b) The determination to proceed shall be made in the resolution proposing to make the improvements, and the following provisions shall then be applicable to the proceedings:
- (1) For the purpose of the report provided for in section 12-10 the preliminary plans for such off-site water facilities need only be general in nature and the estimates therefor shall be the sums specified by the aforementioned arrangement or agreement.
  - (2) Section 12-20 shall not be applicable, and for the purpose of the report provided for in sections 12-18 and 12-19 the preliminary plans used for the report provided for in sections 12-10(a) and (b) (general in nature only as provided in subsection (b)(1) above) shall be sufficient, if adopted by the council in its resolution proposing to make the improvements.
  - (3) For the purpose of section 12-27, the portion of the total amount of the cost of the improvements attributable to such off-site water facilities shall be based upon said sum or sums specified by the aforementioned arrangement or agreement, rather than upon a bid of a lowest responsible and reliable bidder for such off-site water facilities.
  - (4) If section 12-28(a)(4) is applicable to the proceedings, the council need not request a call for bids on such off-site water facilities.
  - (5) At such time as the final details, plans and specifications for such off-site water facilities are prepared, approved by the department of water supply and by resolution approved and adopted by the council, the contract for construction thereof shall be advertised and awarded by the department of water supply pursuant to the provisions of sections 12-23,\* 12-24 and 12-25.\* All remaining funds after payment of the costs of such facilities shall be transferred to and become a part of the reserve fund.
- (1983 CC, c 12, art 2, sec 12-26; am 2002, ord 02-82, sec 12.)

\* **Editor's Note:** Sections 12-23 and 12-25, Hawai'i County Code, were repealed by Ordinance 02-82.

**Section 12-27. Corrected map; preliminary assessment roll and description; notice of authorized improvement.**

- (a) The council shall have the responsible director or manager prepare a corrected map, a preliminary assessment roll, description of assessment units to be assessed, a list of all known owners of the assessment units within the improvement district,

- and the responsible director's or manager's estimate of cost or the bid of the lowest responsible and reliable bidder (if such bid is made).
- (b) The preliminary assessment roll and description of assessment units to be assessed shall contain for the assessment units in the proposed improvement district or in the several subdistricts or zones, if any, the following:
    - (1) Where assessments are based on frontage, the maximum proposed amount per foot of frontage;
    - (2) Where assessments are based on area, the maximum proposed amount per square foot;
    - (3) Where assessments are based on methods other than frontage or area, the method of assessment and the amount of which each unit of assessment shall be assessed;
    - (4) The maximum proposed amount of assessment for each assessment unit; and
    - (5) A list of all known owners of the assessment units within the proposed improvement district.
  - (c) Upon receipt of the corrected map, preliminary assessment roll, and description of assessment units, the council shall give notice of the following:
    - (1) The total cost of improvements as established by the estimate of the responsible director or manager or by the bid of the lowest responsible and reliable bidder, or as otherwise provided in this chapter;
    - (2) The contents of the preliminary assessment roll;
    - (3) The availability of the corrected map, preliminary assessment roll and description of assessment units for inspection at the office of the responsible director or manager during business hours at any time prior to and including the hearing date; and
    - (4) The time, date, and place of the public hearing to be held concerning said items; provided that the date shall not be less than ten days nor more than three weeks after the date of the first newspaper publication of the notice.
  - (d) The notice of improvement and hearing shall be advertised, mailed, and posted in the same manner as provided in section 12-10.
  - (e) At the public hearing, the council shall act as a board of equalization to receive complaints or objections concerning the amounts of the proposed assessments.
- (1983 CC, c 12, art 2, sec 12-27; am 1990, ord 90-127, sec 8; am 1995, ord 95-22, sec 9; am 2001, ord 01-108, sec 1; am 2002, ord 02-82, sec 13; am 2011, ord 11-66, sec 10.)

**Section 12-28. Combination hearings; applicable proceedings.**

- (a) The council may combine the hearings provided for in sections 12-10 and 12-27. If it does so, such determination shall be made in the resolution proposing to make the improvement or improvements, and the following provisions shall then be applicable to the proceedings:
  - (1) The resolution need not specify the maximum estimated amount to be assessed on the unit of assessment nor fix the date of public hearing upon the proposed improvement, but shall direct the preparation by the responsible director or manager of the documents and data to be prepared by such person

as provided in sections 12-18 and 12-19 and in section 12-27 and if applicable shall include the request and direction provided in section 12-20. After the combined hearings, if the council determines to proceed with the improvements, the resolution specified in section 12-20 need not again direct preparation by the responsible director or manager of the documents and data as provided in sections 12-18 and 12-19. The clerk shall not cause the notices to be given as provided in section 12-10 until the documents and data have been so prepared by the responsible director or manager, and if applicable, by each cooperating department, and preliminarily approved by the council, at which time the council shall by resolution requiring not more than one reading for its adoption fix the date of combined hearings; provided that the map, details and plans and specifications specified in sections 12-19 and 12-20 shall be deemed to satisfy this requirement if such documents are determined by the responsible director or manager to be in such form and contain such information as is reasonably necessary to inform the owners and other interested parties at least generally of the nature and scope of the proposed special improvements.

- (2) The matters to be contained in the notices provided for in sections 12-10 and 12-27 shall be combined into single notices to be so published, posted and mailed; for the purpose thereof the total amount of the cost of the improvement shall be based on the estimated cost of the work to be included in bids when received, not upon the bid of the lowest responsible and reliable bidder as specified in section 12-27.
- (3) The council may request the responsible director or manager, to call for bids on all improvements to be constructed under contract to be received on or before the date of the combined hearings pursuant to the provisions of section 12-24
- (4) The responsible director or manager shall prepare an amended preliminary assessment roll based on any revisions in the estimate of the responsible director or manager or on the results of the bids received for improvements as the case may be and shall send said amended assessment roll to the council on or before the public hearing.
  - (A) If the amended preliminary assessment roll shows a proposed amount of assessment for any of the assessment units to be assessed which is more than that shown on the preliminary assessment roll, then, unless the affected owner shall waive the same, the council shall postpone the public hearing and readvertise and mail an amended notice of hearing containing the amended preliminary assessment roll. Said readvertisement and mailing shall be done under the provisions of sections 12-27(c) and (d). Said postponed public hearing shall be conducted in the same manner as provided in section 12-27(e).

- (B) If the amended preliminary assessment roll shows a proposed amount of assessment for each of the assessment units to be assessed which is the same or less than the preliminary assessment roll, the public hearing shall be held as scheduled and the amended preliminary assessment roll shall be considered at said public hearing.

(1983 CC, c 12, art 2, sec 12-28; am 1990, ord 90-127, sec 8; am 1995, ord 95-22, sec 10; am 2001, ord 01-108, sec 1; am 2002, ord 02-82, sec 14; am 2011, ord 11-66, sec 11; am 2013, ord 13-125, sec 5.)

**Section 12-28.1. Termination of improvement districts.**

The council by ordinance shall provide for the procedures to terminate an improvement district created under this chapter once the improvements have been completed and the obligations of the improvement district have been satisfied.

- (a) The ordinance directing termination of an improvement district shall contain the provisions enumerated below:
- (1) The director of finance shall be directed to set aside sufficient funds to cover all outstanding or anticipated debts or obligations of the improvement district, including cost and expenses of making any distributions to assessment unit owners and the cash refund obligations in section 12-28.1(a)(3) below.
  - (2) Any outstanding assessment installments which are not needed to pay the debts or obligations described in section 12-28.1(a)(1) above, shall be canceled.
  - (3) If assessment installments are canceled, those owners whose assessment units have prepaid assessments will be entitled to cash refunds equal to the assessment principal which would be prepaid as of cancellation. For these purposes, "prepaid assessments" shall include all payments made upon the assessments for an assessment unit, whether such payments were made before or after the assessment liens were created.
  - (4) The council may provide that from any funds remaining in the improvement district after the payments described in section 12-28.1(a)(1) or (3) that the director of finance be authorized to make cash refunds to assessment unit owners from remaining improvement district funds in such amounts and at such times as the director of finance finds are reasonable. Any cash refund will be made to the owner of record at the time that the director of finance authorizes such refund.
  - (5) The effective date of termination shall be at such time that the director of finance has determined that all outstanding or anticipated debts or obligations of the improvement district have been paid or can be satisfied and that the cash refunds provisions described above have been made.
- (b) The ordinance directing termination of the improvement district shall not be enacted prior to the redemption date fixed in the call for redemption of all outstanding improvement district bonds at which time the director of finance or paying agent of the County, as the case may be, shall have sufficient funds on hand to pay all outstanding bond principal, interest and any premiums thereon.
- (1990, ord 90-127, sec 9; am 2002, ord 02-82, sec 14.)



**Article 3. Assessments.****Section 12-29. Assessments fixed by ordinance; owner application to pay reduced assessment.**

- (a) After the hearing, the council shall forthwith proceed to make such modifications or changes as to them may seem equitable or just, or shall confirm the first proposed assessment. Upon reaching a final decision the council shall by ordinance, fix the portions of the cost to be assessed against the benefited assessment units and against the owners thereof respectively. The ordinance shall incorporate by reference the assessment roll as approved by the council. After the final enactment of such ordinance the amounts of the several assessments so listed, advertised and incorporated and not previously objected to shall be conclusively presumed to be just and equitable and not in excess of the special benefits accruing or to accrue by reason of the improvement to the specific assessment unit assessed.
- (b) After commencement of improvement district proceedings and prior to the adoption of the improvement district ordinance described in section 12-29(a), an owner may apply for a reduction in the proposed assessment against an assessment unit as follows: (1) file a written application with the County clerk for a reduced assessment not later than one week prior to the time that the ordinance is placed on the council agenda for first reading; (2) deposit the full amount of the proposed reduced assessment, said deposit being an irrevocable commitment by the owner to the payment of the reduced assessment. The amount of reduction shall be as provided by the council, but shall not exceed the applicant's proportionate share of the sum of the improvement district bond reserve fund and the improvement district bond discount allowance and other incidental expenses directly related to the issuance of improvement district bonds. For purposes of the deposit requirements of this section, the owner may direct that refunds due under section 12-7(a) be applied as a deposit hereunder. Such refund amounts shall thereafter be treated as a deposit under this section, except that no cash refund shall be made for or on account of such refund amounts, whether or not they are treated as deposits in this section.
- (1) The director of finance shall submit a report with recommendations to the council with respect to any such applications. The council shall consider such applications and, to the extent that such applications are acceptable to the council, include the same in the improvement district ordinance. Upon approval of the application by inclusion of the reduced assessment in the ordinance, the director of finance shall immediately deposit such funds in the construction special account for the improvement district.
- (2) If the assessment is not reduced by the council, the funds deposited shall be refunded to the owner, except that no refund shall be made for or on account of refunds due for advances made under section 12-7(a). In that event, the owner shall make payment of the assessment as provided in this chapter.

(1983 CC, c 12, art 3, sec 12-29; am 1990, ord 90-127, sec 10; am 2002, ord 02-82, sec 15.)

**Section 12-30. Amended assessments upon consolidation or subdivision.**

- (a) For purposes of this section 12-30:
- (1) "Subdivide," "subdivision," and "subdividing" shall refer to the subdividing of an assessment unit pursuant to chapter 23, Hawai'i County Code, or the subjection of real property to a condominium property regime pursuant to chapter 514A, Hawai'i Revised Statutes.
  - (2) "Consolidate," "consolidation," and "consolidating" shall refer to the consolidation of more than one assessment unit into a single assessment unit.
- (b) In the event that an assessment unit previously assessed is subsequently subdivided, the assessments previously levied against such original assessment unit shall be divided pro rata among the resulting assessment units in accordance with the original method of assessment, subject to section 12-30(c).
- (c) In the event of an increase in the number of assessment units within an improvement district resulting from subdivision, annexation, or otherwise, if so provided in the resolution establishing the improvement district in which such assessment units are located, the department of finance, within sixty days following receipt of notification by the planning department of such approved subdivision, annexation, or other action establishing a new assessment unit or units within the improvement district, shall reallocate the outstanding assessments within the improvement district among the assessment units subject to such outstanding assessments, including the resulting new assessment units.
- (d) In the event that two or more assessment units previously assessed are subsequently consolidated, the total assessments previously levied against such original assessment units shall be levied against the resulting assessment unit.
- (1983 CC, c 12, art 3, sec 12-30; am 1995, ord 95-22, sec 11; am 2001, ord 01-108, sec 1; am 2002, ord 02-82, sec 16.)

**Section 12-31. Notice and collection of assessments.**

The director of finance shall forthwith publish notice of assessment once in at least one daily newspaper of general circulation in the County, and notify the several owners of the assessment units assessed, respectively, by registered letter or certified mail with request for a return receipt, of the several amounts assessed on the respective assessment units and of the date and place the assessments are payable. Such mailed notice shall be addressed to the owners appearing in the records of the real property tax division of the department of finance, County of Hawai'i, as the addresses appear in the records, or as otherwise known to the director of finance if not shown in the records. The director of finance shall also collect the assessments and set aside all moneys collected in a special fund or funds for the frontage improvement or improvement district, as the case may be.

(1983 CC, c 12, art 3, sec 12-31; am 2002, ord 02-82, sec 17.)

**Section 12-32. Assessment as lien; order of priority; mistakes or errors.**

- (a) All assessments made pursuant to this chapter shall be a lien against each assessment unit assessed from the date of the first publication of the ordinance

declaring the assessment until paid and shall have priority over all other liens except the lien of property taxes and for other public purposes. The lien of assessments levied pursuant to this chapter shall be on a parity with the lien of property taxes and liens for other public purposes. As between liens of assessments made pursuant to this chapter, the earlier lien shall be superior to the later lien.

- (b) No delay, mistake, error, defect, or irregularity in any act or proceeding authorized by this chapter shall prejudice or invalidate any assessment. The delay, mistake, error, defect or irregularity may be remedied by subsequent or amended acts or proceedings and, when so remedied, the same shall take effect as of the date of the original act or proceeding.
- (c) If in any court of competent jurisdiction any assessment made under this chapter is set aside for irregularity in the proceedings, the council may, upon notice as required in making an original assessment, make a new assessment in accordance with the provisions of this chapter.

(1983 CC, c 12, art 3, sec 12-32; am 2002, ord 02-82, sec 17.)

**Section 12-33. Due date of payments; election to pay by installments.**

All assessments under this chapter shall be due and payable within thirty days after the date of the last publication of the ordinance; provided that any assessments may, at the election of the owner of the assessment unit assessed, be paid in installments with interest, as hereinafter provided. Failure to pay the whole of any assessment within the period of thirty days shall be conclusively considered and held an election on the part of all persons interested in such assessments, whether under disability or otherwise, to pay in installments. All persons so electing to pay in installments shall be conclusively considered and held to have consented to the improvement and such election shall be conclusively held and considered as a waiver of any and all right to question all power or jurisdiction of the County to make the improvement, the regularity or the sufficiency of the proceedings, or the validity or correctness of the assessment.

(1983 CC, c 12, art 3, sec 12-33; am 2002, ord 02-82, sec 17.)

**Section 12-34. Payment of installments.**

- (a) In case of an election to pay any assessment in installments, the assessment shall be payable in not less than five nor more than twenty annual installments of principal; provided that, in the case of improvements financed by bonds issued to secure loans from the federal government, the maximum number of annual principal installments may be increased so as to permit the repayment of the principal of such bonds over a period not to exceed thirty-five years from the date of issuance; and provided further that the council may, in its discretion, determine the date on which payment of such annual installments shall commence, which date shall be no more than three years from the thirty-first day following the last publication of the ordinance required to be enacted pursuant to section 12-29. The annual installments shall be in such amounts as determined by the council, and each annual installment may be made payable in up to twelve equal monthly or

other periodic installments; provided that principal, interest or both on any bonds outstanding due prior to collection of annual assessment shall be paid in accordance with section 12-49, and except as provided in sections 12-44, 12-45, and 12-46 regarding temporary advances, shall not be paid out of any moneys available in the County treasury. Interest in all cases shall be paid on the unpaid principal, at such rate or rates as may be determined by the council.

- (b) The date on which such annual installments shall commence, the number of such annual installments, the respective amounts of the annual installments, the period of payment, and the rate of interest shall be as determined by the council. Interest for each year may be computed and collected up to the next succeeding date for payment of principal and interest on the bonds issued pursuant to sections 12-44, 12-45, and 12-46, no deduction being made by reason of any installment being due and payable prior to such date; provided, that after the annual installments are determined and fixed if it appears to be of advantage to the assessee, the council may permit the director of finance to accept payments in monthly installments as hereinabove provided.

(1983 CC, c 12, art 3, sec 12-34; am 1984, ord 84-17, sec 1; am 2002, ord 02-82, sec 17; am 2011, ord 11-65, sec 2.)

**Section 12-35. Advance payment of assessment installment.**

The owner of any assessment unit subject to unpaid assessment installments which are not delinquent may, at any time after the thirty day period specified in section 12-33, pay the entire unpaid principal provided the total of the following sums are also paid therewith:

- (1) An amount to be fixed by the director of finance for publishing notice calling bonds;
- (2) Interest on the unpaid principal to the interest due date on the bonds next succeeding forty-five days after the date of advance payment, plus interest for an additional six months on any portion of the unpaid principal which is not evenly divisible by \$1,000; and
- (3) The premium required to be paid on advance payment of installments, if any, as specified in the resolution adopted by the council pursuant to section 12-10.

The premium shall not exceed five percent of the unpaid amount.

(1983 CC, c 12, art 3, sec 12-35; am 2002, ord 02-82, sec 17.)

**Section 12-36. Installment collection expense.**

The director of finance may add to each annual installment on assessments an amount not less than one-half of one percent of the amount of the installment, both principal and interest, to cover the expenses of collection; provided that the council may increase such percentage to the extent the council determines from data presented by the director of finance that an increased percentage is necessary to cover the collection expenses. Such percentage when collected shall belong to the County.

(1983 CC, c 12, art 3, sec 12-36.)

**Section 12-37. Payment in bonds.**

The director of finance may accept in lieu of cash in payment of any assessment, installment thereof, interest, penalty, cost, expense or any portion thereof, bonds of the improvement district in which the assessment unit is situated, whether such bonds are outstanding or hereafter issued, to a value of par, plus accrued interest to the date of acceptance of such bonds by the director of finance. Upon the receipt of such bonds, the director of finance shall cancel the bond and credit the improvement district with the amount allowed on the bonds.

(1983 CC, c 12, art 3, sec 12-37; am 2002, ord 02-82, sec 17.)

**Section 12-38. Failure to pay installments.**

- (a) Failure to pay any installment, whether of principal or interest, when due, shall cause the whole of the unpaid principal to become due and payable immediately, and the delinquent installment or installments shall thereafter bear penalty at the rate of two percent per month or fraction of a month from the date of delinquency until the day of sale as provided in this chapter. At any time prior to the date of sale, the owner may pay the amount of all delinquent installments, with penalty, and all costs and expenses accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been made.
- (b) The council may, by resolution, approve a waiver of such amounts of penalty and upon such terms, as it finds is needed to induce payment of substantial funds to be used for the payment of obligations which are owed and which will be owing to bondholders; in approving such a waiver, due consideration shall be given to an equitable apportionment of the costs of the affected improvement district among the various assessed assessment units.

(1983 CC, c 12, art 3, sec 12-38; am 1982, ord 777, sec 2; am 2002, ord 02-82, sec 17.)

**Section 12-39. Owner of undivided interest.**

The owner of any undivided interest in any assessment unit may pay the whole assessment thereon and may have a joint or several right of action against the other owners of any interest in the assessment unit for their proportionate share of the assessments.

(1983 CC, c 12, art 3, sec 12-39; am 2002, ord 02-82, sec 17.)

**Section 12-40. Sale for default.**

- (a) In case of default in the payment of any installment of principal and interest when due, the director of finance may within one hundred twenty days after such default commences advertise and sell the assessment unit concerning which default is made for the whole of the unpaid assessment thereon, interest and costs. The period of default shall not exceed one year before foreclosure action is initiated. The purchaser of such assessment unit shall be permitted to pay in cash the total amount of the delinquent installment or installments of principal and interest and penalty, and the balance in equal annual or monthly installments as originally

provided, in which event the lien of the unpaid assessment shall remain in full force and effect until final payment of such balance. Such sale and advertisement shall be made by the director of finance in the same manner, under the same conditions and penalties and with the same effect as provided by general law for sales of real property for default in payment of property taxes.

- (b) In the event of the failure of the director of finance to so commence and diligently complete advertisement and sale of the assessment unit pursuant to the provisions of this section, the director of finance shall not be personally liable for such failure, but if a default exists in payment of principal or interest upon bonds, issued to represent an assessment for which any such installment of principal and interest is in default, or if the levy has been made or it appears probable that the levy will be required to be made, the holder of such bonds in the former case, and any persons who are owners of the assessment units subject to such levy and liable to pay same in the latter case, or both, shall have the right to enforce performance of the duties of the director of finance hereunder by action in the nature of mandamus, as provided by law.

(1983 CC, c 12, art 3, sec 12-40; am 2002, ord 02-82, sec 17; am 2011, ord 11-65, sec 3.)

**Section 12-41. Purchase at sale.**

At any sale for default in payment of any assessment levied as provided in this chapter, the director of finance may accept, in lieu of cash, in payment for the assessment unit so sold, bonds of such improvement district whether such bonds are then outstanding or hereafter issued, to a value of par plus accrued interest to date of sale. Upon the receipt of such bonds, the director of finance shall cancel the bonds and credit the improvement district with the amount allowed on the bonds.

(1983 CC, c 12, art 3, sec 12-41; am 2002, ord 02-82, sec 17.)

**Section 12-42. Certificate of balance due.**

The director of finance shall, on request, give a certificate in writing to any person making request for same, showing in the certificate the balance due on any individual assessment for improvements for principal, with the date of next installment payment, the number of the installment payment and the amount to be due for the installment payment and particulars of interest and penalty on the next installment date to be due and owing.

(1983 CC, c 12, art 3, sec 12-42.)

**Section 12-43. Sale of land by director; terms.**

Whenever any assessment unit has been bid in by the director of finance at any sale for default of the owner thereof, the director of finance, in making such sale thereof as may by law be authorized, may sell the assessment unit, upon the following terms and conditions:

- (1) A down payment at the sale of twenty percent of the sale price;

- (2) The balance payable in monthly installments of not less than one and one-third percent of the total sale price, plus interest at the rate of five percent per annum upon all unpaid balances;
  - (3) Failure for thirty days to pay any installment due shall effect an entire forfeiture of the purchaser's right, title and interest in such assessment unit in any payments previously made by the purchaser on account thereof;
  - (4) Such building restrictions as the director of finance may prescribe; and
  - (5) The assessment unit when sold shall be subject to real property taxes.
- (1983 CC, c 12, art 3, sec 12-43; am 2002, ord 02-82, sec 17.)

#### **Article 4. Finance and Payment.**

##### **Section 12-44. Improvement bonds authorized.**

In the event of an election to pay all or part of any such special assessment in installments, the amount required for immediate use to pay the cost of the improvement, or the installments thereof from time to time as they fall due, may be advanced out of any funds available in the general fund or the permanent improvement fund; provided that as soon as practicable, the amounts so necessary shall be secured, and repaid if advances have been made, by the issuance of sufficient district improvement bonds of the County to raise such required amounts.

(1983 CC, c 12, art 4, sec 12-44; am 1984, ord 84-4, sec 3.)

##### **Section 12-45. Contents of bonds.**

- (a) The director of finance, upon authorizing resolution from the council, may issue improvement bonds. The resolution shall require one reading for its adoption. Improvement bonds shall bear the name of the improvement district, and:
  - (1) Shall bear interest at a rate or rates not exceeding a rate or rates established by resolution enacted by the council payable at such time or times;
  - (2) May be made payable as to both principal and interest at such place or places and in such manner within and without the State;
  - (3) May be issued in coupon form without privilege of registration or registrable as to principal only or as to both principal and interest or in fully registrable form without coupons;
  - (4) May be made registrable at such place or places within and without the State; and
  - (5) May be subject to redemption, to being tendered for purchase or to being purchased prior to their stated maturity at the option of the County, the holder or either or both, all as determined by the council or the director of finance as herein provided.
- (b) Unless the council shall itself perform the actions, the director of finance shall:
  - (1) Determine the date, denomination or denominations, interest payment dates, maturity date or dates, place or places of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption;

- (2) The rights of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which those rights may be exercised;
  - (3) The rights to purchase and price or prices and the time or times and terms and conditions upon which those rights may be exercised and the purchase may be made; and
  - (4) Determine all other details of bonds issued under this chapter.
- (c) The principal of and interest and premium, if any, on all bonds issued under this chapter shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts. Dates of such payment shall take into account the dates that assessment installments for the improvement district are due. Improvement bonds shall be subject to call but not prior to the second interest date thereof as hereinafter provided and at such premium, if any, as may have been provided for in the resolution authorizing such bonds, but not in excess of the maximum premium provided in the resolution of the council adopted pursuant to section 12-10.

(1983 CC, c 12, art 4, sec 12-45; am 1984, ord 84-4, sec 3; am 1990, ord 90-127, sec 11.)

**Section 12-46. Execution of bonds; records; funds for payment.**

- (a) Improvement bonds shall be executed by the director of finance, or by a deputy of the director of finance duly designated by the director to execute such bonds, and issued pursuant to and under the authority and requirements of resolutions of the council. The bonds shall bear the lithographed or engraved facsimile signature of the mayor and shall be impressed with a lithographed or engraved facsimile of the seal of the County. If the council provides that no such improvement bond shall be valid or obligatory unless and until there shall be manually executed a certificate of authentication thereof, all signatures of County officials on the bonds may be facsimiles of their respective signatures. Interest coupons, if any, shall bear the lithographed or engraved facsimile of the signature of the director of finance.
- (b) The director of finance shall preserve a record of the bonds in a suitable book kept for that purpose. The council shall provide for books of registry to be kept for the registration of improvement bonds issued in fully registered form or which are subject to registration.
- (c) The bonds shall be payable only out of the moneys collected on account of assessments made for the improvement for which they are issued or from the reserve fund established pursuant to section 12-50, if the moneys collected out of assessments are insufficient to pay the bonds or the interest thereon as they become due. The County shall not otherwise guarantee payment of any bonds issued under the provisions of this chapter, provided that interest payments may be advanced by the council temporarily out of any moneys available in the County treasury.

(1983 CC, c 12, art 4, sec 12-46; am 1984, ord 84-4, sec 3; am 1990, ord 90-127, sec 11.)



**Section 12-47. General obligation bonds and special assessment revolving fund.**

- (a) For any improvement initiated pursuant to section 12-10 only, the council, in lieu of the issuance of improvement bonds as permitted by sections 12-44, 12-45, and 12-46 may in its sole discretion issue general obligation bonds of the County or authorize payment of the required amount from the special assessment revolving fund of the County or both.
- (b) The council shall have power to issue general obligation bonds of the County for the purpose of establishing, maintaining or replenishing the special assessment revolving fund.
- (c) All such general obligation bonds shall be authorized, issued and sold under, pursuant to, and in accordance with chapter 47, Hawai'i Revised Statutes, as amended, all of the provisions of which chapter shall be applicable thereto. Without limiting the generality of the provisions of the foregoing sentence, the form, name, date, denomination, numbers, maximum interest rate, method of execution and all other details of such general obligation bonds shall be fixed and determined in accordance with and as provided by chapter 47. No right of prior redemption need be reserved in the issuance of such bonds, nor shall either the amounts or dates of the maturities of any such bonds be required to conform in any way to the amounts and due dates of any assessments.
- (d) The validity of such general obligation bonds shall not be dependent on or affected in any way by any proceedings taken or any contracts made, acts performed or done in connection with, or in furtherance of, any improvement or any assessments for such improvement.
- (e) If the issuance of general obligation bonds are issued as provided in this section, all moneys collected on account of assessments and interest for any improvement that is financed by such bonds, may, to the extent so directed by the council, be applied to the reimbursement of the general fund of the County to the extent of the amounts paid for interest on and principal of such general obligation bonds. Any amounts collected on account of assessments and interest as aforesaid to the extent not so directed by the council to be applied to such reimbursement or in excess of the amounts required for such reimbursement, and amounts collected on account of assessments and interest for any improvement financed from the special assessment revolving fund, shall be appropriated to and become a part of the special assessment revolving fund and may be used and applied as authorized by the council.

(1983 CC, c 12, art 4, sec 12-47; am 1984, ord 84-4, sec 3; am 1990, ord 90-127, sec 11.)

**Section 12-48. Exemption of general obligation bonds from certain requirements.**

The provisions of sections 12-49, 12-50, 12-51,\* 12-52, 12-53, 12-54 and 12-55\* shall not apply to the general obligation bonds authorized by section 12-47 and such sections shall be restricted in their application to improvement bonds, nor shall the provisions of article 5 of this chapter apply to such general obligation bonds unless the council in its

sole discretion shall consent to the application of such provisions to such bonds. The refunding of any such general obligation bonds shall not in any way affect the payment of assessment installment and the interest thereon or the amounts and times of such payments unless such refunding is part of a plan consented to by the council and adopted under article 5 of this chapter.

(1983 CC, c 12, art 4, sec 12-48; am 1984, ord 84-4, sec 3; am 1990, ord 90-127, sec 11.)

\* **Editor's Note:** Sections 12-51 and 12-55, Hawaii County Code, were repealed by Ordinances 84-4 and 90-127.

**Section 12-49. Special fund for administrative and pre-formation costs and payment of bonds; use of surplus; insufficient funds.**

- (a) All moneys collected on account of assessments and interest for any improvement after the issuance of any bonds shall be kept by the director of finance in a special fund and applied to the payment of interest and principal of bonds and administrative costs issued for the improvement until the bonds have been paid. The director of finance of the County shall pay the principal of the bonds at maturity and the interest thereon as and when the same become due at the place or places and in the manner prescribed for the payment under this chapter and the proceedings authorizing those bonds from such special fund.
- (b) If any surplus remains in any special fund after the disbursement of funds described in section 12-28.1 of this chapter, such surplus or premium shall be credited to and become a part of a fund to be known as the improvement district revolving fund, the moneys in which shall be available to make up deficiencies in the proceeds of bonds sold below par, to cover deficiencies in interest realized on account of diminishing balances of installments outstanding, and to advance interest due on bonds outstanding prior to collection of annual assessments, and also for the purpose of paying all expenses in connection with the sale of delinquent improvement district assessment units and the prices of the delinquent assessment units as are bid for and purchased by the director of finance. The director of finance may upon such purchase, transfer the proper amounts so bid to the proper special funds for the respective improvement districts concerned. The director of finance may also use the improvement district revolving fund to advance the cost of pre-formation activities pursuant to section 12-7 with the expectation that the improvement district revolving fund will be reimbursed after the improvement district is formed.
- (c) If moneys in the applicable special fund prove insufficient at any time to pay the principal and interest, or the interest only, as the case may be, on bonds outstanding, moneys shall be transferred from the reserve fund established pursuant to section 12-50, or from the improvement district revolving fund into such special fund in such amounts as will enable the director of finance to make the payments of principal or interest, or interest only, as the same becomes due.

(1983 CC, c 12, art 4, sec 12-49; am 1984, ord 84-4, sec 3; am 1990, ord 90-127, sec 11; am 2002, ord 02-82, sec 18; am 2011, ord 11-101, sec 2.)

**Section 12-50. Reserve fund.**

- (a) The council may provide in the resolution adopted pursuant to section 12-10 for a reserve fund as additional security for the payment of principal and interest on improvement bonds issued in proceedings taken pursuant to this chapter. The reserve fund shall be initially funded from the proceeds from the sale of improvement bonds with respect to which such reserve fund is established in such amount as is designated by the council in the resolution authorizing such bonds. Moneys in a reserve fund shall be used in accordance with the provisions of section 12-49 and to pay the principal or interest, or both, in whole or in part, on the last outstanding maturity or maturities of the bonds, and assessment installments or such portions thereof which would otherwise be collected to make such payments shall be canceled, provided that in making use of moneys in the reserve fund to pay principal or interest, or both, on the last outstanding maturity or maturities of the bonds, the director of finance shall make provisions for expected delinquencies in payment of any portions of assessment installments which will not be canceled by such use of the reserve fund, and provided further that insofar as the moneys are attributable to fully paid assessments rather than to cancellation of installments or portions thereof, the moneys shall be paid pro rata to the persons who at the time of such apportionment own (as shown on the records of the County tax office) the assessment units subjected to the assessments.
- (b) There shall be transferred to the improvement district revolving fund of the County:
- (1) Any portion of such moneys which shall not have been paid to or claimed by the persons entitled thereto within two years after the due date of the last bonds; and
  - (2) Any interest earned from the investment of such moneys during the two year period.

(1983 CC, c 12, art 4, sec 12-50; am 1984, ord 84-4, sec 3; am 1990, ord 90-127, sec 11; am 2002, ord 02-82, sec 18.)

**Section 12-51. Repealed.**

(1983 CC, c 12, art 4, sec 12-51; rep 1984, ord 84-4, sec 3.)

**Section 12-52. Place of payment of bonds.**

The principal and interest of the bonds shall be payable at the office of the director of finance and may also be made payable at the office of any bank, fiduciary company, or in such other places as may be determined by the council, provided that interest on registered bonds may be payable by check or draft mailed to the registered holders as provided by the council. In all cases, the bonds and coupons, if any, shall recite the places and manner of payment. In case any bonds are made payable elsewhere than in Hilo, Hawai'i, the director of finance shall remit the funds necessary to pay the interest and principal when due, of any such bonds, to the institution so designated, first assuring that such institution is then solvent.

(1983 CC, c 12, art 4, sec 12-52; am 1984, ord 84-4, sec 3.)

**Section 12-53. Sale of bonds; use as payment to contractor.**

- (a) The director of finance may make such arrangements as may be necessary or proper for the sale of each issue of bonds or part thereof as are issued under this article, including without limitation, arranging for the preparation and printing of the bonds, the official statement and any other documents or instruments deemed required for the issuance and sale of bonds and retaining those financial, accounting, and legal consultants, all upon such terms and conditions as the director of finance deems advisable and in the best interest of the County. The council may authorize the director of finance to offer the bonds at competitive sale or to negotiate the sale of the bonds to:
- (1) Any person or group of persons;
  - (2) The United States of America, or any board, agency, instrumentality, or corporation thereof;
  - (3) The employees retirement system of the State;
  - (4) Any political subdivision of the State;
  - (5) Any board, agency, instrumentality, public corporation, or other governmental organization of the State; or of any political subdivision of the State.
- (b) Subject to any limitation imposed by the council by the ordinance or resolution authorizing the bonds, the sale of the bonds by the director of finance by negotiation shall be at such price or prices and upon such terms and conditions, from time to time in such manner, as the director of finance shall approve.
- (c) Subject to any limitation imposed by the council by the resolution authorizing the bonds, the sale of the bonds by the director of finance at competitive sale shall be at such price or prices and upon such terms and conditions, and the bonds shall bear interest at such rate or rates or such varying rates determined from time to time in the manner, as specified by the successful bidder, and the bonds shall be sold in accordance with this subsection. The bonds offered at competitive sale shall be sold only after published notice of sale advising prospective purchasers of the proposed sale. The bonds offered at competitive sale may be sold to the bidder offering to purchase the bonds at the lowest interest cost, the interest cost, for the purpose of this subsection, being determined on one of the following bases as selected by the director of finance:
- (1) The figure obtained by adding together the amounts of interest payable on the bonds from their date to their respective maturity dates at the rate or rates specified by the bidder and deducting from the sum obtained the amount of any premium offered by the bidder;
  - (2) Where the interest on the bonds is payable annually, the annual interest rate (compounded annually), or where the interest on the bonds is payable semiannually, the rate obtained by doubling the semiannual interest rate (compounded semiannually), necessary to discount the principal and interest payments on the bonds from the dates of payment thereof to the date of the bonds and to the price bid (the price bid for the purpose of this paragraph shall not include the amount of interest accrued on the bonds from their date to the date of delivery and payment); or

- (3) Where the interest on the bonds is payable other than annually or semiannually or will vary from time to time, upon such basis as, in the opinion of the director of finance, shall result in the lowest cost to the County; provided that in any case the right shall be reserved to reject any or all bids and waive any irregularity or informality in any bid.
- (d) Bonds offered at competitive sale, without further action of the council, shall bear interest at the rate or rates specified by the successful bidder or varying rate or rates determined from time to time in the manner specified by the successful bidder with the consent of the director of finance. The notice of sale required by this section shall be published at least once and at least five days prior to the date of the sale in a newspaper circulating in the County and in a financial newspaper or newspapers published in any of the cities of New York, Chicago, or San Francisco, and shall be in such form and contain such terms and conditions as the director of finance shall determine. The notice of sale shall comply with the requirements of this section if it merely advises prospective purchasers of the proposed sale and makes reference to a detailed notice of sale which is available to the prospective purchasers and which sets forth the specific details of the bonds and terms and conditions upon which such bonds are to be offered. The notice of sale published and any detailed notice of sale may omit the date and time of sale, in which event the date and time shall be either published in the same newspapers in which the notice of sale has been published or transmitted via electronic communication systems deemed proper by the director of finance which is generally available to the financial community, in either case at least forty-eight hours prior to the time fixed for the sale.
- (e) The proceeds of the sale of bonds shall be applied to pay the contract price. If no purchaser is found, the County may be the purchaser of any such bonds, using any funds available and unspent. Bonds sold to a purchaser other than the County may be sold for such discount as is acceptable to the council.
- (f) The council may provide for payment to the contractor of the contract price of the improvement by means of progress payments during the period of the work, such payments in bonds at par or in cash or both.
- (1983 CC, c 12, art 4, sec 12-53; am 1984, ord 84-4, sec 3; am 1990, ord 90-127, sec 12.)

**Section 12-54. Payment of bonds.**

- (a) All improvement bonds not previously paid shall be paid at maturity together with interest thereon as the same become due at the places and in the manner prescribed by this chapter.
- (b) The resolution of the council authorizing improvement bonds may provide that such bonds may be called for redemption prior to the stated maturity. In such event, on and after the second interest due date of any such improvement bonds issued pursuant to this chapter, whenever sufficient funds are in the hands of the director of finance by reason of payment of assessment installments, exceeding the next interest payment on the unpaid balance of any bonds so issued, the director of finance is authorized to call for payment prior to the stated maturity thereof such

number of improvement bonds as there are funds to pay. The resolution of the council authorizing the improvement bonds shall provide for proper and adequate notice of such redemption to be published or mailed or both prior to the date fixed for redemption. A copy of such notice shall also be mailed to the person who purchased such bonds at the original sale thereof. Interest on the bonds so called for payment shall cease on the date of call, provided that the notice shall be published or mailed at least fifteen days before the date of such call. If notice must be made by publication, a second publication shall be made not less than one week after the date of first publication. The moneys provided for the payment of such bonds with the interest unpaid to the date of their call for payment, together with any applicable premium payable, shall be set aside by the director of finance in a special deposit to which fund only the owners of the bonds shall thereafter look for payment.

- (c) Improvement bonds shall be selected for redemption in the manner prescribed by the council.
- (d) Any premium paid on redemption may not exceed five percent of the face amount of the improvement bond.

(1983 CC, c 12, art 4, sec 12-54; am 1984, ord 84-4, sec 3; am 1990, ord 90-127, sec 12.)

**Section 12-55. Repealed.**

(1983 CC, c 12, art 4, sec 12-55; am 1984, ord 84-4, sec 3; rep 1990, ord 90-127, sec 13.)

**Section 12-55.1. Exemption from taxes.**

- (a) All bonds heretofore or hereafter issued under the authority of this chapter and the income therefrom shall be exempt from any and all taxation by the State or any County or other political subdivision thereof, except inheritance, transfer, and estate taxes.
- (b) Bonds issued under this chapter, to the extent practicable, shall be issued so as to comply with requirements imposed by valid Federal law providing that the interest on those bonds shall be excluded from gross income for Federal income purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance is authorized to enter into arrangements, establish funds or accounts, and take any action required in order to comply with any valid Federal law. Nothing in this chapter shall be deemed to prohibit the issuance of bonds, the interest on which may be included in gross income for Federal income tax purposes.

For the purpose of ensuring that interest on bonds issued pursuant to this chapter which is excluded from gross income for Federal income tax purposes (except as provided above) on the date of issuance shall continue to be so excluded, no County officer or employee or user of an undertaking or loan program shall authorize or allow any change, amendment, or modification to an undertaking or loan program financed or refinanced with the proceeds of the bonds which change,

amendment or modification would affect the exclusion of interest on the bonds from gross income for Federal income tax purposes unless the change, amendment, or modification shall have received the prior approval of the director of finance.

Failure to receive the approval of the director of finance shall render any change, amendment, or modification void.

(1990, ord 90-127, sec 14.)

**Section 12-56. Bonds not chargeable against general revenue.**

No improvement bonds issued under the provisions of this chapter shall be considered as County bonds within the meaning of section 248-5, Hawai'i Revised Statutes, nor shall the payment of same be a charge against the general revenues of the County.

(1983 CC, c 12, art 4, sec 12-56; am 1984, ord 84-4, sec 3.)

**Section 12-57. Errors in computation of amount due.**

No improvement bond, coupon, assessment or installation thereof or of the interest or penalties thereon, or certificate of sale or deed shall be held invalid for any error in the computation of the proper amount due on the same, if the error is found to be comparatively negligible.

(1983 CC, c 12, art 4, sec 12-57; am 1984, ord 84-4, sec 3.)

**Article 5. Refunding.**

**Section 12-58. Refunding authorized.**

The council may provide for the refunding of the outstanding indebtedness of improvement districts located within the County in the manner provided in this article.

(1983 CC, c 12, art 5, sec 12-58.)

**Section 12-59. Initiation of refunding.**

- (a) The owners of assessment units in any improvement district whose assessment units represent seventy-five percent or more of the outstanding improvement assessments at the time of the filing of the petition shall, if it is desired that the indebtedness of the district be refunded, file with the council a petition, which petition shall set forth the indebtedness of the district, that it is desired that the indebtedness be refunded, and the proposed method of refunding the outstanding indebtedness.
- (b) The council shall thereupon, by resolution requiring not more than one reading for its adoption, direct the director of finance to investigate and report to the council:
  - (1) The amount of unpaid assessments and the assessment units subject to the assessment in the improvement district;
  - (2) The detail of any delinquent assessments and of any unpaid penalties;
  - (3) Whether the petitioners own assessment units representing seventy-five percent or more of the unpaid assessments in the district;

- (4) The proposed method of reassessment of the assessment units subject to existing assessments;
  - (5) A new assessment roll showing the proposed new assessments;
  - (6) The cost of the proposed refunding scheme; and
  - (7) Other details which may be necessary to carry into effect the proposed refunding project.
- (c) The report of the director of finance shall be filed with the council.
- (d) Thereafter the council shall, by resolution requiring one reading for its adoption, propose the adoption of the suggested refunding plan specifying:
- (1) The outstanding indebtedness of the district;
  - (2) That the owners of assessment units representing not less than seventy-five percent of the unpaid improvement assessments have petitioned that the outstanding indebtedness of the district be refunded;
  - (3) The proposed refunding plan in detail; and
  - (4) The proposed method of reassessment, including the minimum number of installment payments to be proposed, and the maximum amount to be assessed against a unit of assessment.

The resolution shall refer to and incorporate by reference the preliminary assessment roll and such other data reported by the director of finance as shall be approved by the council. The resolution shall also fix the date of public hearing upon such plan, which date shall not be less than fifteen days after the first publication of notice thereof in a newspaper of general circulation in the County. In addition, the resolution may require the petitioners to deposit with the director of finance, within seven days after adoption of such resolution, a sum sufficient to meet the cost of the refunding project as reported by the director of finance, in which case the holding of the public hearing and any other actions of the County with respect to the refunding shall be conditioned on the making of such deposit within such period.

- (e) After the adoption of the resolution, the clerk shall cause a notice of the public hearing to be published as provided in section 12-10, giving notice generally to all owners of the assessment units still under assessment in the improvement district, stating the time and place of the public hearing and where the resolution, preliminary assessment roll and other data may be seen and examined prior to the hearing. Like notices shall be posted in three of the most conspicuous places in the improvement district for which the outstanding bonds are issued. Affidavits of publication, both in the newspaper and of the posting, respectively, shall be filed with the council at the hearing.

(1983 CC, c 12, art 5, sec 12-59; am 2001, ord 01-108, sec 1; am 2002, ord 02-82, sec 19; am 2011, ord 11-66, sec 12.)

**Section 12-60. Protest against refunding.**

- (a) Any owner of an assessment unit, the assessments on which to pay the outstanding indebtedness have not been fully discharged, may at any time prior to or at the public hearing, file in writing with the council any protest, objection or suggestion



as to the proposed refunding measure, stating briefly the reason therefor, or may present the same in person orally at the public hearing. If the owners of assessment units representing thirty percent or more of the outstanding improvement assessments shall at the hearing, or prior thereto, file with the council written protests duly acknowledged by the owners against the proposed refunding project, or against any part of the refunding plan, the refunding shall not be made contrary to protest. If the protest is against the adoption of any refunding plan, the plan shall not be made, and the proceedings shall not be renewed within one year from the date of closing the public hearing, unless each owner protesting shall sooner withdraw the protest.

- (b) The council shall also at the hearing sit as a board of equalization to receive complaints or objections respecting the total amounts of the proposed assessments. (1983 CC, c 12, art 5, sec 12-60; am 2002, ord 02-82, sec 19.)

**Section 12-61. Determination by council.**

- (a) After the hearing, the council shall consider any protests or suggestions which may have been made or filed and whether sufficient valid protests have been filed to compel it to abandon the proposed refunding plan. If the council has jurisdiction to continue, it shall then proceed to determine whether or not the refunding plan shall be adopted as proposed, or adopted with modifications. In the latter event the clerk shall be directed to give notice again of the hearing as provided in section 12-59.
- (b) If after such initial and further advertisement and hearing the council determines to proceed with the refunding measure, it shall, by ordinance, promulgate the refunding measure. Should the refunding project provide for the issuance of new bonds in the improvement district, the ordinance shall provide for the form of new bonds to be issued, approve of the assessment roll, and incorporate the assessment roll by reference. The assessment roll, as provided in section 12-26\* shall contain only the names of the owners of assessment units who have not fully paid the assessments originally provided for the payment of the outstanding improvement bonds and shall provide for the levying of new assessments in amounts sufficient to retire the refunding bonds to be issued pursuant to the terms hereof.
- (c) After the final enactment of the ordinance, the amounts of the several assessments listed, advertised or incorporated, not previously objected to, shall conclusively be presumed to be just and equitable and not in excess of the special benefits accruing or to accrue by reason of the original improvement project. Upon final passage of the ordinance as provided above, all assessments therein made shall be a lien in the same manner and to the same extent as provided in section 12-32; provided, that in no case shall this new assessment constitute a lien on any assessment unit which has been discharged from the payment of the original assessment.

(1983 CC, c 12, art 5, sec 12-61; am 2001, ord 01-123, sec 2; am 2002, ord 02-82, sec 19.)

\* **Editor's Note:** See section 12-27, Hawai'i County Code, regarding preliminary assessment rolls.

**Section 12-62. Refunding bonds.**

- (a) Improvement bonds issued for the refunding of the outstanding indebtedness of any improvement district shall bear the name of the improvement district for which they are issued, and shall be issued and sold under all the conditions and terms as prescribed by article 4 of this chapter, except as otherwise prescribed in this chapter.
- (b) A lower rate of interest than that authorized in the original issue of improvement bonds may be prescribed and the refunding bonds may be authorized to run for a term not to exceed fifteen years from the final maturity date of the outstanding bonds.

(1983 CC, c 12, art 5, sec 12-62; am 1984, ord 84-4, sec 4.)

**Section 12-63. Petition by all owners.**

If the petition is filed and acknowledged by the owners of assessment units representing one hundred percent of the unpaid assessments in any improvement district, and by all lessees of any assessment unit to be assessed, who, by the express terms of their respective leases must pay the kind of assessments contemplated by this article, unless the lessor of such lease files with the petition a duly acknowledged waiver of the stipulation in the lease which requires the lessee to pay such special assessments, and a written undertaking by the lessor or owner to pay the special assessments to be made under the proposed refunding plan, then the council shall proceed as provided above to have a hearing on the proposed new method of assessment and the assessment roll; provided that in case the owners of assessment units representing one hundred percent of the unpaid assessment as provided in this section consent, in writing, to the amount and apportionment of the proposed assessments under the refunding plan, it shall be unnecessary to give the notice or to hold any of the hearings specified above and the council may immediately proceed to fix the assessment in the manner provided; and provided further that the council may by resolution require the petitioners to deposit with the director of finance, within seven days after adoption of such resolution, a sum sufficient to meet the cost of the refunding project as reported by the director of finance, in which case the holding of the public hearing (if applicable) and any other actions of the County with respect to the refunding shall be conditioned on the making of such deposit within such period.

(1983 CC, c 12, art 5, sec 12-63; am 2001, ord 01-108, sec 1; am 2002, ord 02-82, sec 19; am 2011, ord 11-66, sec 13.)

**Section 12-64. Cancellation of retired bonds.**

Should the refunding project provide for the retirement of the outstanding bonds of the improvement district, the director of finance shall stamp the retired bonds "canceled" and shall keep such canceled bonds in his possession.

(1983 CC, c 12, art 5, sec 12-64.)

**Section 12-65. Obligations unimpaired.**

Nothing in this article shall be construed as giving the council or any improvement district authority to impair the obligations of the improvement district under any outstanding improvement district bonds.

(1983 CC, c 12, art 5, sec 12-65.)

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