REPORT OF THE COMMITTEE ON BUDGET

Voting Members:
Tyler Dos Santos-Tam, Chair; Scott Y. Nishimoto, Vice Chair;
Radiant Cordero, Esther Kia'āina, Matt Weyer

Committee Meeting Held
April 29, 2025

Honorable Tommy Waters
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Budget, which considered Bill 35 (2025) entitled:

"A BILL FOR AN ORDINANCE RELATING TO LEASE AND RENTAL OF CITY REAL PROPERTY,"

transmitted by Departmental Communication 112 (2025), dated February 12, 2025, from the Department of Land Management ("DLM") which passed first reading at the April 16, 2025 Council meeting, reports as follows:

The purpose of the bill is to amend Chapter 38, Revised Ordinances of Honolulu 2021 to address the lease and rental of City real property.

The Director Designate of Housing and Land Management, Cat Taschner, provided comments.

The Executive Director of the Office of Economic Revitalization, Amy Asselbaye, provided comments.

Two individuals provided comments.

Your Committee considered and approved a proposed posted CD1 version that makes the following amendments:

A. In SECTION 2 of the bill, amends ROH § 38-1.3, relating to definitions, to:

1. Add a new definition of "Affordable Housing" to mean the development of a rental housing project with a majority of the total number of dwelling units in the project rented to households earning 80 percent or below of the area median income determined by the U.S. Department of Housing and Urban Development annually for the Honolulu Metropolitan Statistical Area as adjusted for household size.

2. Amend the definition of "Community Development" to mean the process of improving social, physical, and environmental conditions of a community through coordinated efforts that enhance the well-being, stability, and sustainability of its residents, including initiatives that promote equitable access to essential services, infrastructure, and affordable and workforce housing.

3. Add a new definition of "DES Director" to mean the Director of Enterprise Services.

4. Delete the definition of "Disadvantaged Business Enterprise."

5. Amends the definition of "DLM Director" to reference the "DHLM Director," and to mean the Director of Housing and Land Management.

6. Add a new definition of "DPR Director" to mean the Director of Parks and Recreation.

7. Delete the definition of "Economic Development."

8. Add a definition of "Qualified Improvement" to mean any permanent capital improvement made to real property, the ownership of which will revert to the city upon the expiration of the lease (moved from ROH § 38-3.1).

9. Add a definition of "Solicitation" to mean a request for qualifications, request for bids, request for proposals, or any similar solicitation (moved from ROH § 38-2.2)

B. In SECTION 4 of the bill, moves the definition of "solicitation" from ROH § 38-2.2 to ROH § 38-1.3.

C. In SECTION 4 of the bill, amends ROH § 38-2.3, relating to publication of solicitations, by:

1. Amending subsection (a) to provide that publication of a lease solicitation must be made a minimum of ___ calendar days (instead of within a reasonable time) prior to the response deadline set forth in the solicitation.

2. Deleting subsection (c), relating to the required deposit by a party requesting publication of a solicitation (the City determines the solicitation method).

D. In SECTION 4 of the bill, adds a new ROH § 38-2.4(d), relating to selection of solicitation responses, to provide that the selection process (for the award of a lease) must be conducted in compliance with applicable State procurement laws, rules, and regulations.

E. In SECTION 4 of the bill, amends ROH § 38-2.5, relating to Council approval and notice to the Council, by:

1. Amending subsection (a), relating to circumstances when Council approval of a lease is required, to provide that upon council approval of the lease by resolution, amendments recommended by the Corporation Counsel as necessary or desirable may be included in the final lease that is executed by the parties (instead of allowing the DLM director to make clarifying and nonsubstantive revisions to effectuate the intent of the lease or other contract).

2. Amending subsection (b), relating to circumstances when Council approval of a lease is not required, to:

   a. Amend subdivision (1) to provide that the term of the lease does not exceed ___ years (instead of five years).

   b. Delete subdivision (2), which would not have required Council approval if the tenant is any political or governmental subdivision of the federal, State, or county governments, and renumber the subsequent subdivision; and

   c. Amend renumbered subdivision (2) to provide that the tenant is a nonprofit organization, child care operator, or organization involved in community development (deletes references to disadvantaged business enterprise and organization involved in economic development), and the full unexpired lease term does not exceed ___ years (instead of 10 years).

F. In SECTION 6 of the bill, amends ROH § 38-3.1, relating to lease requirements, by:

1. Reformatting subsection (b) into three subdivisions:

   a. In subdivision (2), deletes reference to the satisfaction of the DLM Director in the director's absolute discretion; and

   b. In subdivision (3), moves the definition of "qualified improvement" to ROH § 38-1.3.

2. Amending subsection (c) to add a new subdivision (4) to provide that the extension of a lease for affordable housing that meets all of the requirements and conditions in subdivisions (1), (2), and (3) are subject to Council approval by resolution.

3. Amending subsection (e) to provide that no lease is transferable or assignable without the prior approval of the DHLM Director, and subject to Council approval by resolution. Also provides that the Council (instead of the DLM Director) may condition or withhold its approval in the Council's absolute discretion.

4. Amending subsection (f) to provide that no subleasing is permitted without the prior approval of the DHLM Director, and subject to Council approval by resolution. Also provides that the Council (instead of the DLM Director) may condition or withhold its approval in the Council's absolute discretion.

5. Amending subsection (g) to provide that the DHLM Director and the Council may subject the lease to other terms and conditions that the DLM Director or the Council deems advisable.

G. In SECTION 6 of the bill, amends ROH § 38-3.2(a), relating to circumstances where solicitation of a lease is not required, by:

1. Amending subdivision (1) to retain reference to property acquired by eminent domain or negotiated purchase or exchange, but delete reference to when immediate use of the property acquired is not necessary, and limits the term of the lease to not more than ___ years (instead of five years).

2. Amending subdivision (2) to retain references to leases to a nonprofit organization, affiliated organization, child care operator, or organization involved in community development, but delete references to a disadvantaged business enterprise or organization involved in economic development.

3. Amending subdivision (4) to retain reference to leases to any political or governmental subdivision of the City, but delete references to any political or government subdivision of the federal, State, or other county governments.

4. Amending subdivision (5) to retain references to a threat to life, public health, safety, or welfare by reason of a major natural disaster, epidemic, riot, or fire, but require that the mayor first issue a proclamation declaring a public emergency.

5. Amending subdivision (6) to retain references to leases to City employees as perquisite housing, but delete references to leases to State employees as perquisite housing.

H. In SECTION 6 of the bill, adds a new ROH § 38-3.5 to require the DHLM Director to adopt rules pursuant to HRS Chapter 91 for the administration, implementation, and enforcement of new Article 3.

I. In SECTION 8 of the bill, amends ROH § 38-4.2, relating to the BFS director's authority to call for bids, accept bids, and award concessions, to provide that the BFS director may delegate the director's authority to the director of a department that has authority over the concession.

J. In SECTION 8 of the bill, amends ROH § 38-4.4, relating to publication of a call for competitive sealed bids, to provide that in addition to publication in a daily newspaper of general circulation in the City, an alternative method is to post the call for competitive sealed bids on the electronic procurement system.

K. In SECTION 8 of the bill, deletes ROH § 38-4.5, relating to the deposit required from a party requesting publication of a solicitation (the City initiates publication of the request for bids for a concession). Renumbers subsequent sections.

L. In SECTION 8 of the bill, amends renumbered ROH § 38-4.5, relating to the opening or rejection of bids, by:

1. Amending subsection (a) to delete the requirement that the BFS director open the competitive sealed bids in the presence of all bidders who attend the opening, and that bidders in attendance may inspect the opened bids.

2. Amending subsection (c) to provide that the City Clerk, upon receipt of the BFS director's written report naming the successful bidder, is required to post the report on the electronic procurement system (instead of the Council's meeting agenda bulletin board).

M. In SECTION 8 of the bill, amends renumbered ROH § 38-4.7, relating to deposits that must accompany bids, to provide that the deposit of legal tender or certified check must be issued by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration (instead of being drawn on a bank doing business within the State).

N. In SECTION 8 of the bill, moves former ROH § 38-4.10 to a new ROH § 38-4.8, relating to a bond in lieu of the bid deposit. Renumbers subsequent sections.

O. In SECTION 8 of the bill, amends renumbered ROH § 38-4.9, relating to forfeiture and return of deposits, to:

1. Reformat the section into two subsections; and

2. Clarify that the security is required under ROH § 38-4.11, and the bid deposit is required under ROH § 38-4.7.

P. In SECTION 8 of the bill, amends renumbered ROH § 38-4.10, relating to contract execution and award to the highest responsible bidder, to reformat the section into two subsections.

Q. In SECTION 8 of the bill, amends renumbered ROH § 38-4.11, relating to a security payment, to:

1. Reformat the section into two subsections; and

2. Amend subsection (b) to provide that the security payment must be made by a deposit of legal tender or certified check issued by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, or in lieu of the security payment, the BFS director may accept a surety bond, but deletes the requirement that the surety company issuing the surety bond be authorized to do business in the State.

R. In SECTION 8 of the bill, amends renumbered ROH § 38-4.12, relating to surety company qualification, delete all provisions and instead provide that the issuer of the surety bond must be a surety company that qualifies under HRS § 102-12.

S. In SECTION 8 of the bill, amends renumbered ROH § 38-4.14, relating to concessions solicited by competitive sealed proposals, by:

1. Moving former ROH § 38-4.17(6) to new ROH § 38-4.14(a)(4), to provide that concessions that provide for beach- or ocean-related recreational services may be solicited by competitive sealed proposals.

2. Moving former ROH § 38-4.17(8) to new ROH § 38-4.14(a)(5), to provide that concessions that are located at City zoos, botanical gardens, or parks that are designated by the DPR director as environmentally, culturally, historically, or operationally unique may be solicited by competitive sealed proposals; and to require the BFS director to delegate the BFS director's authority relating to the concession to the DPR director or the DES director, as appropriate, based on the department that has authority over the concession.

T. In SECTION 8 of the bill, amends renumbered ROH § 38-4.16, relating to circumstances when bidding is not required, by:

1. Deleting subdivision (3), relating to concessions that are set aside for use by handicapped or blind persons. Renumbers subsequent subdivisions.

2. Amending renumbered subdivision (3) to retain reference to leases to any political or governmental subdivision of the city, but delete references to any political government subdivision of the federal, State, or other county governments.

3. Moving former subdivision (6), relating to requests for proposals for beach- and ocean-related services concessions to renumbered ROH § 38-4.14(a)(4). Renumbers subsequent subdivisions.

4. Amending renumbered subdivision 5, relating to nonprofit zoo, botanical garden, and unique park concessions, to delete the requirement that the nonprofit group be incorporated under State law.

5. Moving former subdivision (8), relating to requests for proposals for zoo, botanical garden, and unique park concessions to renumbered ROH § 38-4.14(a)(5). Renumbers subsequent subdivisions.

6. Deleting former subdivision (10), relating to concession spaces for public pay telephones (there are no public pay telephone concessions). Renumbers subsequent subdivisions.

U. In SECTION 8 of the bill, adds a new ROH § 38-4.17 to require the BFS director to adopt rules pursuant to HRS Chapter 91 for the administration, implementation, and enforcement of new Article 4.

REPORT OF THE COMMITTEE ON BUDGET

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Radiant Cordero, Esther Kia'āina, Matt Weyer

V. Amends SECTION 12 of the bill to instruct the Revisor of Ordinances to update the Reporting Requirements Table to delete the reporting requirements repealed by SECTIONS 3 and 5 of the bill and include the reporting requirements added by SECTIONS 4, 6, and 8 of the bill.

W. Amends SECTION 13 of the bill, relating to the effective date, to provide that the ordinance takes effect on July 1, 2025 (instead of upon approval of the ordinance) and will be repealed on July 1, 2029.

X. Makes miscellaneous technical and nonsubstantive amendments for purposes of grammar, formatting, style, clarity, and consistency.

Your Committee on Budget is in accord with the intent and purpose of Bill 35 (2025), as amended herein (Ayes: Cordero, Dos Santos-Tam, Kia'āina, Nishimoto – 4; Noes: Weyer – 1), and recommends that it pass second reading, be scheduled for a public hearing, and be accepted by the Committee on Executive Management for further consideration pursuant to its consecutive referral, in the form attached hereto as Bill 35 (2025), CD1. (Ayes: Cordero, Dos Santos-Tam, Kia'āina, Nishimoto, – 4; Aye with reservations: Weyer – 1; Noes: None.)

Respectfully submitted,

Committee Chair

HONOLULU CITY COUNCIL
Ke Kanihela o ke Kalana o Honolulu
CITY AND COUNTY OF HONOLULU

ADOPTED ON MAY 14 2025

COMMITTEE REPORT NO. 144

A BILL FOR AN ORDINANCE

RELATING TO LEASE AND RENTAL OF CITY REAL PROPERTY.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend Chapter 38, Revised Ordinances of Honolulu 2021 ("Lease and Rental of City Real Property, Including Fees"), to address the lease and rental of City real property.

SECTION 2. Chapter 38, Article 1, Revised Ordinances of Honolulu 2021, is amended to read as follows:

"ARTICLE 1: GENERAL PROVISIONS

§ 38-1.1 Purpose.

The purpose of this chapter is to establish a uniform procedure for the lease or rental of real property owned by the city, with the exception of [~~the~~] city [~~hall building~~] office buildings, including Honolulu Hale, Kapalāma Hale, Kapolei Hale, and the Mayor Frank F. Fasi municipal building. [~~Any and all~~] All office [~~spaces~~] space located within [~~the subject two~~] city office buildings [~~shall be~~] are reserved for the exclusive use by agencies of the city.

§ 38-1.2 Scope.

The scope of this chapter includes the policy that the lease or rental of real property of the city or the award of concessions [~~shall~~] require public advertisements and [~~bids,~~] solicitations, except under [~~specific~~] specified circumstances. This chapter also includes the required [~~bidding~~] procedures [~~and attendant terms of agreements~~] requirements and restrictions, and penalties.

§ 38-1.3 Definitions.

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

Affiliated Organization. Any individual, organization, or agency that operates to support any program performed or sponsored by the federal, State, or city government,

as determined by the affiliated federal, State, or city government agency in writing; provided that the written determination is included in the contract file.

Affordable Housing. Development of a rental housing project with a majority of the total number of dwelling units in the project rented to households earning 80 percent or below of the area median income determined by the U.S. Department of Housing and Urban Development annually for the Honolulu Metropolitan Statistical Area, as adjusted for household size.

Agency. Any office, department, board, commission, or other governmental unit of the city, including the council and its offices.

BFS Director. The director of budget and fiscal services.

Child Care Operator. Any individual, organization, or agency that operates a "child care facility," as that term is defined in HRS § 346-151.

Concession. [~~The grant to a private individual, partnership, or corporation of the privilege to conduct operations essentially retail in nature, involving the sale of goods, wares, merchandise, or services to the general public, such as restaurants, retail stores, parking facilities, golf driving ranges, canoe storage facilities (halaus), in or on land or buildings owned or controlled by the City and County of Honolulu.~~] Any individual, organization, or agency that operates a "concession," as that term is defined in HRS § 102-1.

Community Development. The process of improving social, physical, and environmental conditions of a community through coordinated efforts that enhance the well-being, stability, and sustainability of its residents, including initiatives that promote equitable access to essential services, infrastructure, and affordable and workforce housing.

Council. The council of the City and County of Honolulu.

DES Director. The director of enterprise services.

DHLM Director. The director of housing and land management.

[~~***Director***. The director of budget and fiscal services.~~]

DPR Director. The director of parks and recreation.

Managing Director. The managing director of the City and County of Honolulu.

Nonprofit Organization. An association, corporation, or other entity, organized and operated exclusively for religious, charitable, scientific, literary, cultural, educational, recreational, or other nonprofit purposes, no part of the assets, income, or earnings of which inures to the benefit of any individual or member thereof, and whose charter, articles, or other [~~enabling act contains~~] organizational documents contain a provision that, in the event of dissolution, the assets owned by such association, corporation, or other entity [~~shall~~] must be distributed to another association, corporation, or other entity organized and operated exclusively for nonprofit purposes, and which further qualifies for an exemption from the general excise tax provisions of HRS Chapter 237, [~~as amended,~~] and under § 501 of the Internal Revenue Code of 1954, as amended. [~~Such~~] The nonprofit organization [~~must~~] may not merely be a sponsor of the event, production, attraction, or activity being given, but must actively promote, produce, stage, or conduct [~~such~~] the event, production, attraction, or activity.

Qualified Improvement. Any permanent capital improvement made to real property, the ownership of which will revert to the city upon the expiration of the lease.

Solicitation. A request for qualifications, request for bids, request for proposals, or similar solicitation."

SECTION 3. Chapter 38, Article 2, Revised Ordinances of Honolulu 2021 ("Bidding Requirement and Procedures"), is repealed.

SECTION 4. Chapter 38, Revised Ordinances of Honolulu 2021 ("Lease and Rental of City Real Property, Including Fees"), is amended by adding a new Article 2 to read as follows:

"ARTICLE 2: LEASING PROCEDURES

§ 38-2.1 Solicitations required.

Unless expressly excepted or addressed in this chapter, real property owned by or under the jurisdiction of the city, including any building, land, or space in any building or land, must be leased under contract awarded pursuant to public solicitation in the manner provided in this article.

§ 38-2.2 Solicitations.

The DHLM director shall call for solicitations, accept solicitation responses, and award leases on terms and conditions approved by the corporation counsel as to form and legality. Solicitations may be for individual properties or a portfolio of properties. Solicitations may be for the award of a lease together with another contract, including but not limited to development contracts, but does not include concession contracts.

§ 38-2.3 Publication of solicitations.

(a) Publication of the solicitation must be made a minimum of ____ calendar days prior to the response deadline set forth in the solicitation. The DHLM director has the discretion to determine how the notice may be published, which may include publication in a newspaper of general circulation, notice by mail to all persons on an applicable bidders mailing list, publication by a public or private telecommunication information network, or any other method of publication the DHLM director deems to be effective.

(b) At a minimum, the solicitation must include the following information:

(1) A description of the lease objectives;

(2) A description of the leased premises;

(3) The term of the lease;

(4) The amount and type of government funds available, if any; and

(5) A description of where to find more information on the lease.

§ 38-2.4 Selection.

(a) All solicitation responses must be delivered to the DHLM director in the manner stated in the solicitation, and must be opened by the DHLM director at the hour and place stated in the solicitation.

(b) The DHLM director may reject any solicitation responses or waive any defects, if the DHLM director determines that a rejection or waiver will be in the best interest of the city.

(c) Solicitation responses must be evaluated pursuant to the criteria stated in the solicitation. If stated in the solicitation, the city may negotiate the lease with an offeror.

(d) The selection process must be conducted in compliance with applicable State procurement laws, rules, and regulations.

§ 38-2.5 Council approval—Notice to the council.

(a) *Approval required.* Except as otherwise provided in subsection (b), the lease must be submitted by the DHLM director to the council for approval by resolution. In approving the lease, the council may add, delete, or amend any term or condition of the lease. If the lease is being awarded concurrently with another contract, including but not limited to a development contract, the other contract must be submitted to the council for joint approval under the same resolution. In approving the other contract, the council may add, delete, or amend any term or condition of the other contract. Upon council approval of the lease by resolution, amendments recommended by the corporation counsel as necessary or desirable may be included in the final lease that is executed by the parties.

(b) *Approval not required.* Council approval by resolution is not required for lease awards under the following circumstances:

(1) The term of the lease does not exceed ___ years; or

(2) The tenant is a nonprofit organization, child care operator, or organization involved in community development, and the full unexpired lease term does not exceed ___ years.

(c) *Report to council.* By September 30 of each year, the DHLM director shall submit a report to the council notifying the council of all lease awards issued without council approval in the immediately preceding fiscal year."

SECTION 5. Chapter 38, Article 3, Revised Ordinances of Honolulu 2021 ("Exceptions to Bidding Requirement"), is repealed.

A BILL FOR AN ORDINANCE

SECTION 6. Chapter 38, Revised Ordinances of Honolulu 2021 ("Lease and Rental of City Real Property, Including Fees"), is amended by adding a new Article 3 to read as follows:

"**ARTICLE 3: LEASE REQUIREMENTS, RESTRICTIONS, EXCEPTIONS**

§ 38-3.1 Lease requirements.

Except as otherwise provided in this chapter, the following restrictions apply to all leases.

(a) All leases offered for nominal rent must be accompanied by a specific finding by the DHLM director that the nominal rent serves the public interest, and are subject to council approval by resolution.

(b) All leases with an initial or extension term that exceeds 10 years in total must satisfy one or more of the following:

(1) The value of the qualified improvement of the property must be equal to or exceed $125,000;

(2) The lessee is providing to the city an equivalent provision of goods or services; or

(3) The DHLM director makes a specific finding that waiver of the requirements in subdivisions (1) and (2) serves the public interest, and the council approves the lease by resolution.

(c) No lease term may exceed 75 years; provided that a lease for affordable housing may exceed 75 years if the DHLM director extends an existing lease, subject to the following requirements and conditions:

(1) To ensure the quality of the affordable units, the lessee must be obligated to rehabilitate the affordable housing units to the satisfaction of the DHLM director;

(2) The lease rent may be renegotiated;

(3) The DHLM director shall issue a specific finding, that:

(A) The city continues to have the public need for the affordable housing located on the leased land and is reasonably likely to continue to have this public need during the period for which the lease is being extended;

(B) The lease extension will support the lessee's ability to finance any necessary rehabilitation and continued maintenance of the affordable units; and

(C) The lessee has experience operating, rehabilitating, and owning or leasing multi-unit housing developments for low- to moderate-income households; and

(4) The extension of a lease for affordable housing that meets all of the requirements and conditions in subdivisions (1), (2), and (3) must be approved by the council by resolution.

(d) No lease may be extended if the lessee is in arrears in the payment of taxes, rents, or other obligations owed to the city.

(e) No lease is transferable or assignable, in whole or in part, without the prior approval of the DHLM director, and subject to council approval by resolution. The council may condition or withhold its approval at the council's absolute discretion.

(f) No subleasing is permitted, in whole or in part, without the prior approval of the DHLM director, and subject to council approval by resolution. The council may condition or withhold its approval at the council's absolute discretion.

(g) The DHLM director and the council may subject the lease to other terms and conditions that the DHLM director or the council deems advisable to implement and effectuate the purposes and intent of the city charter and this chapter.

(h) In all cases where the DHLM director is required to make a specific finding, the specific finding must include an evaluation of:

(1) The request being made pursuant to subsection (a), (b), or (c), and the proposed justification therefor;

(2) The impact of the request as it relates to the lessee's financial circumstances and capacity;

(3) Comparable market conditions and circumstances; and

(4) The public interest served by the request.

§ 38-3.2 Solicitations not required.

(a) The DHLM director may award contracts to lease property on terms and conditions approved by the corporation counsel as to form and legality, without issuing a solicitation under the following circumstances.

(1) *Eminent domain or negotiated purchase or exchange*. Real property or improvements thereon, or both, were acquired by the city pursuant to eminent domain proceedings, or by negotiated purchase or exchange in lieu thereof, as determined by the DHLM director in writing; provided that the written determination is included in the contract file; and further provided that the term of the lease does not exceed ____ years.

(2) *Nonprofit organizations and certain other organizations*. Real property or improvements thereon, or both, leased to a nonprofit organization, affiliated organization, child care operator, or organization involved in community development.

(3) *Accessory uses*. Real property or improvements thereon, or both, leased to contractors that are awarded city construction contracts, for use as a field office and for the storage of equipment and supplies relating to the awarded city construction contract; provided that the lease must be at the fair market rent and is limited to the duration of the construction contract.

(4) *City subdivisions*. Real property or improvements thereon, or both, leased to any political or governmental subdivision of the city.

(5) *Emergencies*. A situation of an unusual or compelling urgency creates a threat to life, public health, safety, or welfare by reason of a major natural disaster, epidemic, riot, or fire; provided that the mayor has first issued a proclamation declaring a public emergency arising from the event that caused the threat to life, public health, safety, or welfare, and the mayor's emergency declaration is included in the contract file.

(6) *City perquisite housing*. Real property and improvements thereon, or both, provided to city employees as perquisite housing.

(7) *Thirty-day period or less*. Real property or improvements thereon, or both, leased for a period not to exceed 30 consecutive days; provided that no extension of a lease is allowed without a public solicitation.

(8) *Activities without charge*. For activities set aside without any charge; provided that the lessee or tenant does not operate a concession.

(b) In each case where a solicitation is not used, the DHLM director shall include a justification in its transmittal to the council for approval, as required under § 38-2.5(a), or in its report to council, as required under § 38-2.5(c).

§ 38-3.3 Solicitations under separate provisions.

Articles 2 and 3 do not apply to the following.

(1) *Concessions*. Concessions will be awarded pursuant to Article 4.

(2) *Property under department of enterprise services*. The rental of facilities for events or attractions at the Neal S. Blaisdell Center, the Tom Moffatt Waikiki Shell, or other properties under the jurisdiction of the department of enterprise services will be pursuant to Articles 6 through 9.

(3) *Grounds of City Hall and the Mayor Frank F. Fasi Municipal Building*. The rental and use of the grounds of City Hall, and the Mayor Frank F. Fasi Municipal Building will be pursuant to Article 11.

(4) *Telecommunications facilities*. City-owned property leased for use as telecommunications facilities will be pursuant to Article 12.

§ 38-3.4 Solicitation not required—Outdoor dining services.

The city department or agency designated by the mayor under § 13-20.3 may issue permits for outdoor dining services pursuant to that section without calling for public solicitations.

§ 38-3.5 Rules.

The DHLM Director shall adopt rules pursuant to HRS Chapter 91 for the administration, implementation, and enforcement of this article."

SECTION 7. Chapter 38, Article 4, Revised Ordinances of Honolulu 2021 ("Terms of Agreements"), is repealed.

SECTION 8. Chapter 38, Revised Ordinances of Honolulu 2021 ("Lease and Rental of City Real Property, Including Fees"), is amended by adding a new Article 4 to read as follows:

"ARTICLE 4: CONCESSIONS

§ 38-4.1 Bidding required.

Except as expressly provided pursuant to this chapter, all concessions or concession spaces in any building, or on any land owned by or under the jurisdiction of the city, must be leased or rented under a contract awarded by public solicitation for competitive sealed bids in the manner provided under this article.

§ 38-4.2 Call for bids.

The BFS director shall call for bids, accept bids, and award concessions on terms and conditions approved by the corporation counsel, as to form and legality; provided that the BFS director may delegate the director's authority under this article to the director of a department that has authority over the concession.

§ 38-4.3 Qualification of bidders.

(a) Before any prospective bidder submits any bid required under this chapter, the bidder shall, not less than six calendar days before the day designated for the opening of the bids, provide written notice to the BFS director of the bidder's

intent to submit a bid, and the BFS director shall review and verify the prospective bidder's financial ability, experience, and competence to fulfill the terms and conditions of the contract to be awarded under the concession solicitation.

(b) The BFS director may require prospective bidders to submit answers, under oath, to questions contained in a questionnaire setting forth a complete statement of the experience, competence, and financial standing of the prospective bidders. Whenever it appears to the BFS director that any prospective bidder is not fully qualified to fulfill the terms and conditions of the contract to be awarded under the concession solicitation, the BFS director may, after affording the prospective bidder an opportunity to respond, refuse to receive or consider any bid offered by the prospective bidder.

(c) All information contained in the questionnaire responses must remain confidential, and any government officer or employee who knowingly discloses or allows disclosure of confidential information to any person not privy to the confidential information shall be subject to penalties as provided by law. Questionnaire responses will be returned to the prospective bidder after award of the contract.

§ 38-4.4 Advertisement for bids.

(a) Publication of a call for competitive sealed bids for the awarding of concessions or concession spaces must be made for a minimum of three separate days in a daily newspaper of general circulation in the city, or alternatively by posting the call for competitive sealed bids on the electronic procurement system.

(b) The public solicitation must at a minimum include the following information:

(1) A description of and objectives for the concession;

(2) The location;

(3) The scope of the award or lease;

(4) The length of the award or lease;

(5) The amount and type of government funds available for the concession, if any; and

(6) A description of any special requirements for the concession or unique features of the concession space.

§ 38-4.5 Bids—Opening—Rejection.

(a) Opening of the competitive sealed bids may not be less than five days after the last publication of the public solicitation. All bids must be sealed and delivered to the BFS director, and must be opened by the BFS director at the hour and place stated in the call for competitive sealed bids.

(b) The BFS director may reject any or all bids and waive any defects, when in the BFS director's discretion, the rejection or waiver will be in the best interest of the city.

(c) Upon completion of the selection process, the BFS director shall file a written report with the city clerk, including the results and naming the successful bidder. The city clerk, upon receipt of the written report, shall post the report for public inspection on the electronic procurement system, and the written report will be a public record.

§ 38-4.6 Bids—Withdrawals.

No bidder may withdraw a submitted bid for a period of 60 consecutive days after the opening of the bids.

§ 38-4.7 Deposits to accompany bid.

All bids must be accompanied by a deposit of legal tender or a certified check issued by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable to the city, in an amount equal to 5 percent of the amount bid for the term of the concession, but in no event less than $50; provided that when the bid amount exceeds $50,000, the deposit of legal tender or certified check must be in the amount of $2,500 plus two percent of the amount in excess of $2,500.

§ 38-4.8 Bond in lieu of deposit.

In lieu of the deposit of legal tender or a certified check, a bid may be accompanied by a surety bond naming the city as obligee, with the bidder as principal, issued by a surety company, in a penal sum equal to the deposit required under § 38-4.7, and conditioned upon the bidder entering into the contract and furnishing the required security within 10 days after the award, or within any extension period the BFS director may allow.

§ 38-4.9 Forfeiture of deposits—Return.

(a) If the successful bidder that is awarded the concession contract fails or neglects to enter into the contract and furnish the security (required under § 38-4.11) within 10 calendar days after the contract award, or within any extension period the BFS director may allow, the BFS director shall pay the successful bidder's deposit (required under § 38-4.7) into the treasury as a realization of the city. If the contract is entered into and the security furnished within the required time period, the deposit will be returned to the successful bidder.

(b) Deposits made by unsuccessful bidders will be returned after the contract is entered into or, if the contract is not entered into, within 60 days after the opening of the bids or after the BFS director publishes another call for competitive sealed bids, whichever is earlier.

§ 38-4.10 Contract execution—Award to highest responsible bidder.

(a) All concession contracts must be in writing, executed by the BFS director on behalf of the city, and awarded to the responsible bidder that submitted the highest and best bid; provided that the bidder qualifies for the award by providing the security required in § 38-4.11.

(b) If the highest and best bid, or any other bid has been rejected, or if the successful bidder that was awarded the contract fails to enter into the contract and furnish the required security, the BFS director may award the contract to the responsible bidder that submitted the next highest and best bid.

§ 38-4.11 Security deposit.

(a) Before any concession contract is entered into, the successful bidder shall provide a security payment by a deposit of legal tender or a certified check issued by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable to the city, in an amount equal to two months' rental, or other security amount required under the contract.

(b) In lieu of the security payment, the BFS director may accept a surety bond naming the city as obligee, with the bidder as principal, issued by a surety company, in an amount equal to the security amount.

§ 38-4.12 Surety company—Qualification.

The issuer of the surety bond must be a surety company that qualifies under HRS § 102-12.

§ 38-4.13 Violation voids contract.

Any concession contract awarded or executed in violation of this chapter will be void and of no effect.

§ 38-4.14 Competitive sealed proposals.

(a) Notwithstanding anything to the contrary in this chapter, the city may award a concession by competitive sealed proposals under the following circumstances.

(1) The real property or improvements thereon, or both, will be used for cultural, arts, nature, sports, recreational, historical, or other similar activities open to the public.

(2) The council approves of the use of competitive sealed proposals by ordinance or resolution in advance of the issuance of the request for proposals.

(3) The BFS director determines in writing that the use of competitive sealed bids is either not practicable or not advantageous to the city, and the written determination is included in the contract file. Factors to be

considered in determining whether competitive sealed bidding is not practicable or not advantageous to the city include:

(A) Whether the award determination involves the consideration of factors in addition to a financial return to the city;

(B) Whether verbal or written discussions may need to be conducted with offerors concerning technical and financial aspects of their proposals;

(C) Whether offerors may need to be afforded the opportunity to revise their proposals, including revision of the financial return to the city; and

(D) Whether an award may need to be based on a comparative evaluation as stated in the request for proposals of differing financial return, quality, and contractual factors, to determine the most advantageous offer to the city. Quality factors may include technical and performance capability and the content of the technical proposal.

(4) Concessions or concession spaces that provide for beach- or ocean-related recreational services.

(5) Concessions or concession spaces that are located at city zoos, city botanical gardens, or city parks that are designated by the DPR director as environmentally, culturally, historically, or operationally unique; provided that the BFS director shall delegate the BFS director's authority relating to concessions at city zoos, botanical gardens, or city parks to the DPR director or the DES director, as appropriate, based on the department that has authority over the concession.

(b) Competitive sealed proposals must be solicited through a request for proposals.

(c) Public solicitation of the request for proposals must be provided in the same form and manner as the public solicitation of a request for bids under § 38-4.4.

(d) Proposals must be opened in a manner that avoids disclosure of their contents to competing offerors during discussion. A register of proposals must be prepared and must be open for public inspection after the contract award.

(e) The request for proposals must state the relative importance of:

(1) The financial return to the city; and

(2) Other evaluation factors.

(f) To obtain a full understanding of the offeror's responsiveness to the solicitation requirements, discussions may be conducted with responsible offerors submitting proposals that are reasonably likely to be selected for award. Offerors must be given fair and equal treatment regarding discussion opportunities and proposal revisions. Revisions may be allowed after submission and before award to obtain the best and final offers. In conducting discussions, no information derived from proposals submitted by competing offerors may be disclosed.

(g) An award will be made to the responsible offeror that submits the proposal determined in writing to be the most advantageous to the city, taking into consideration the financial return to the city and the evaluation criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file must contain the basis on which the award is made.

§ 38-4.15 Term of concessions.

The maximum term of any concession is 25 years; provided that any concession term longer than five years must be approved by the council by resolution.

§ 38-4.16 Bidding not required—Concessions.

The BFS director may award concessions on terms and conditions approved by the corporation counsel as to form and legality without issuing a solicitation under the following circumstances.

(1) *Activities without charge*. Concessions or concession spaces set aside without any charge for events, productions, attractions, or activities, including the exhibition and sale of handcrafts, works of art, produce, or products of a nonprofit organization, so long as the sale of the craft items,

works of art, produce, or products are made by a member of the organization who actually makes, creates, grows, or gathers the items being sold; provided that all net profits earned by the nonprofit organization from the concession are applied to the expenses of the organization for events or activities directly related to the purpose for which it has been organized.

(2) *Periods of two days or less.* Concessions or concession spaces set aside without charge for a period not to exceed two consecutive days for:

(A) The exhibition and sale of works of art by artists who actually produce the works of art being exhibited and sold;

(B) The exhibition and sale of handcrafted items being exhibited and sold; or

(C) The display and sale of fruits and vegetables, seafood, and prepared but not manufactured food products by the person who actually grows or gathers the fruits and vegetables, catches the seafood, or prepares the food products being displayed and sold.

(3) *City subdivisions.* Concessions or concession spaces set aside for use by any political or governmental subdivision of the city.

(4) *Nonprofit beachboy concessions.* Concessions or concession spaces set aside for use by beachboys licensed by the State department of transportation.

(A) *Policy.* The council finds that Hawaiian beachboys are rooted in the State's historical and cultural traditions, and there is a need for the city to provide for concessions to licensed beachboys on beachside property under the jurisdiction of the city.

(B) *Definition.* For purposes of this subdivision:

(i) "Nonprofit beachboy concession" is the grant to a qualified beachboy association of the privilege to conduct operations essentially retail in nature, involving the rental of surfboards, bodyboards, or canoes; and

(ii) "Qualified beachboy association" is an association that is dedicated to the preservation of the beachboy tradition and is a nonprofit organization.

(C) *Special conditions*. The following special conditions apply to the award of nonprofit beachboy concessions on beachside park property under the jurisdiction of the city:

(i) The DPR director shall designate specific sites on beachside park property for each beachboy concession, and site locations must not impede access to and use of the beach by the public;

(ii) A nonprofit beachboy concession may offer instruction for the use of rental equipment incidental to the rental of the equipment, and offer the sale of canoe rides incidental to the rental of canoes; and

(iii) The DPR director shall establish policies to ensure that the use of nonprofit beachboy concessions is restricted to beachboys who are licensed by the State department of transportation, and that the concessions provide equal opportunity for use by all licensed beachboys.

(D) *Fees and charges for beachboy concessions*. The DPR director shall set the fees charged by the beachboy concessions.

(E) *Rules*. The DPR director shall adopt rules pursuant to HRS Chapter 91 to implement this subdivision.

(5) *Nonprofit zoo, botanical garden, and unique park concessions*. Concessions or concession space at city zoos, botanical gardens, or parks that are designated by the DPR director as environmentally, culturally, historically, or operationally unique and are set aside for use by nonprofit organizations that support city goals and objectives for the zoo, botanical gardens, and designated parks; provided that each nonprofit organization shall annually submit to the DPR director and the council an

audited financial statement of the revenues and expenditures of the nonprofit organization.

(6) *Vending machines*. Concession spaces that are leased or rented for vending machines, except for insurance vending machines.

(7) *Hans L'Orange baseball facility*. Concessions or concession spaces at the Hans L'Orange baseball facility set aside without charge to the permittee of a professional sports activity; provided that the period of use of the concession or concession space is limited to the term of the applicable permit. For the purposes of this subdivision:

(A) "Permittee" is the promoter, sponsor, exhibitor, league, or other person that obtains a permit to conduct a professional sports activity at a professional sports facility;

(B) "Professional sports activity" is a game, event, exhibition, or activity of a recognized sport for which admission fees are charged and the participants receive compensation in return for participation in the sport; and

(C) "Hans L'Orange Baseball Facility" includes the playing field, bleachers, stands, and other areas of the facility that are enclosed by a fence.

(8) *Parking spaces for shared micromobility vehicles*. Concessions or concession spaces, including parking spaces, set aside for shared micromobility vehicle businesses. For the purposes of this subdivision, "shared micromobility vehicle business" has the same meaning as defined in § 15-31.1.

(9) *Lei vendors*. Concessions or concession spaces for the sale of lei and lei-related products.

(10) *Automated teller machines*. Concession spaces for the placement and operation of automated teller machines.

(11) *Permits revocable with notice of 30 days or less.* Concessions or concession spaces that are contracted through permits revocable on 30 days or less advance notice; provided that the permit term does not exceed a period of one year.

(12) *Sole source concessions.* Concessions that furnish goods or services for which there is only one source, as determined by the BFS director in writing; provided that the written determination is included in the contract file.

(13) *Concessions without charge.* Concessions or concession spaces set aside without any charge.

§ 38-4.17 Rules.

The BFS director shall adopt rules pursuant to HRS Chapter 91 for the administration, implementation, and enforcement of this article."

SECTION 9. The title of Chapter 38, Article 7, Revised Ordinances of Honolulu 2021, is amended to read as follows:

"ARTICLE 7: <u>DEPARTMENT OF ENTERPRISE SERVICES FACILITY</u> RENTAL SCHEDULE"

SECTION 10. The title of Chapter 38, Article 8, Revised Ordinances of Honolulu 2021, is amended to read as follows:

"ARTICLE 8: <u>DEPARTMENT OF ENTERPRISE SERVICES</u> CONCESSIONS"

SECTION 11. The title of Chapter 38, Article 9, Revised Ordinances of Honolulu 2021, is amended to read as follows:

"ARTICLE 9: <u>DEPARTMENT OF ENTERPRISE SERVICES FACILITIES -</u> NONPROFIT ORGANIZATIONS"

A BILL FOR AN ORDINANCE

SECTION 12. In SECTIONS 2, 9, 10, and 11 of the bill, ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under SECTION 2 of Ordinance 23-7, update the Reporting Requirements Table to delete the reporting requirements repealed by SECTIONS 3 and 5 of this ordinance and include the reporting requirements enacted by SECTIONS 4, 6, and 8 of this ordinance.

A BILL FOR AN ORDINANCE

SECTION 13. This ordinance takes effect on July 1, 2025 and will be repealed on July 1, 2029.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

March 28, 2025
Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____ , 20___ .

RICK BLANGIARDI, Mayor
City and County of Honolulu

Report Title:
Lease and Rental of City Real Property; Revised Ordinances of Honolulu 2021 ("ROH"); Chapter 38 ("Lease and Rental of City Real Property, Including Fees"); Department of Land Management ("DLM"); Department of Parks and Recreation ("DPR"); Department of Enterprise Services ("DES"); Department of Housing and Land Management

Description:
Amends ROH Chapter 38, particularly Articles 1 through 4, to streamline the process by which the City leases property.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.