

CONSTITUTION OF THE KWAJALEIN ATOLL

LOCAL GOVERNMENT

PART I - PRELIMINARY

SECTION 1. NAME OF THE LOCAL GOVERNMENT

The name of the local government is Kwajalein Atoll Local Government.

SECTION 2. LOCAL GOVERNMENT AREA

The area of jurisdiction of the local government is Kwajalein Atoll and, in accordance with Article IX, Section 1(2) and (3) of the Constitution of the Marshall Islands, extends to the sea and the seabed of the internal waters of that Atoll and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll is measured, as more particularly described in Schedule 1.

SECTION 3. CAPITOL

The principal office of the local government shall be located at Ebeye Island, Kwajalein Atoll, or at such other place in the local government area as the Council by resolution declares.

PART II - THE LEGISLATURE

Section 4. ESTABLISHMENT OF THE LEGISLATURE

A legislature, to be known as the Kwajalein Atoll Council, is hereby established for the local government, and in accordance with Section 13(1) of the Local Government Act 1980 the Ordinance - making, taxing and appropriation powers of the local government under Article IX, Section 2 of the Constitution of the Marshall Islands are vested in it.

Section 5. MEMBERSHIP AND ELECTIONS

(1) The Council shall consist of 9 members, being -

(a) 8 at-large members holding land rights within the Kwajalein local government area; and

(b) 1 at-large member not holding any land rights within the Kwajalein local government area; and

(c) the Mayor as provided in Section 13(2), as an ex-officio member.

(2) The at-large members referred to in Subsection (1)(a)(b) shall be elected by ballot by the eligible voters of Kwajalein Atoll as provided for by Sections 13 and 23 of the Local Government Act 1980.

(3) The first general election of council members, including the Mayor, shall be held on a date, as soon as practicable after the effective date of this Constitution, to be fixed by the Chief Electoral Officer, and thereafter every four years on a date as near as practicable to the fourth anniversary of the preceding general election, fixed by the Chief Electoral Officer.

Section 6. QUALIFICATIONS

(c) not to be certified insane; and

(d) not to be serving a criminal sentence for a felony including probation or parole; and

(e) have land rights within the Kwajalein local government area.

(2) The qualifications for election as the at-large member referred to in Section 5(1)(b) is to -

(a) be a citizen of the Marshall Islands; and

(b) be 25 years of age or older; and

(c) not be certified insane; and

(d) not to be serving a criminal sentence for felony including probation or parole; and

(e) not have land rights within the Kwajalein local government area.

SECTION 7. TERM OF OFFICE

The term of office of a member referred to in Section 5(1) -

(a) commences on the day after the day on which his election is announced.

(b) terminates (unless the seat of the member becomes vacant earlier under Section (8) on the day before the next general election to the Council.

SECTION 8. VACATION OF SEATS

(1) The seat of a member of the Council becomes vacant if, and only if -

(a) his term of office terminates in accordance with Section 7; or

(b) he ceases to possess the qualifications for election that he was required, under Section 6, to have at the time of his election or appointed; or

(c) he dies; or

(d) he resigns his seat by notice in writing to the local government; or

(e) he is removed from office under Subsection (2).

(2) The Council may, by the affirmative vote of not less than 3/4 of the total membership of the Council, remove a member from office, for cause.

SECTION 9. CASUAL VACANCIES

(1) If the seat of a member of the Council referred to in Section 5(1) becomes vacant otherwise than by the termination of his term of office in accordance with Section 7, the vacancy shall be filled as soon as practicable by a special election in the ward or area that he represented.

accordance with the Rules of Procedure of the Council.

(2) The Chief Electoral Officer shall, as soon as practicable after the declaration of the results of the first general election to the Council, by notice to all members call a meeting of the Council.

(3) The Mayor may at any time, and shall as soon as practicable after receipt of a petition of a majority of the members of the Council, stating the business to be dealt with, call a meeting of the Council, by notice in accordance with the Rules of Procedure of the Council stating the business to be dealt with.

(4) A special meeting shall deal only with the subjects stated in the notice calling the meeting.

(5) Meetings of the Council shall be held in public.

(6) The quorum for a meeting of the Council is a majority of the total number of the membership of the Council.

(7) The Mayor shall preside at all meetings of the Council at which he is present and, subject to Section 18 and to the Rules of Procedures of the Council, in his absence or during a vacancy in his office a member elected by the members present shall preside.

(8) Except as otherwise provided by the Local Government Act in accordance with the majority of the votes of the members present and voting, but no question shall be decided on an evenly-divided vote.

SECTION 11. PROCEDURES

(1) The Council shall keep and publish a journal of its proceedings.

(2) The Council shall make Rules of Procedure, not inconsistent with this Constitution, any Central Government law or any Ordinance of the local government, for the regulation and orderly conduct of its proceedings and the dispatch of its official business.

(3) Subject to this Constitution, any Central Government law or any Ordinance of the local government, the Council may regulate its own proceedings.

SECTION 12. COMMITTEES

The Council may establish standing and other committees to deal with any matter that can in its opinion more properly or more conveniently be dealt with by a committee.

PART III. THE HEAD OF THE LOCAL GOVERNMENT

SECTION 13. OFFICE OF THE HEAD OF THE LOCAL GOVERNMENT

(1) An office of head of the local government, who shall be known as the Mayor, is hereby established for the local government.

(2) The Mayor shall be an ex officio member of the Council.

SECTION 14. QUALIFICATIONS

The qualifications for election as Mayor are to -

(a) be a citizen of the Marshall Islands; and

(b) be 30 years of age or older; and

(e) have land rights within Kwajalein local government area.

SECTION 15. ELECTION

(1) The Mayor shall be elected by ballot by the eligible voters of Kwajalein Atoll as provided in Sections 13 and 23 of the Local Government Act 1980.

(2) Election for Mayor shall be held with the general elections for members of the Council as provided in Section 5(3).

(3) The term of office of the Mayor shall be 4 years and shall commence with the announcement of his election and terminate when his successor's election has been announced.

SECTION 16. VACATION OF OFFICE

(1) The office of the Mayor becomes vacant if, and only if -

(a) his term of office terminate in accordance with Section 15(3); or

(b) he ceases to possess the qualifications he was required to have under Section 14; or

(c) he dies; or

(d) he resigns his seat by notice in writing to the local government; or

(e) he is dismissed under subsection (2).

(2) The Mayor may be dismissed from office upon the submission to the council of a petition signed by 25% of the registered voters of Kwajalein Atoll and approved by a vote of a 2/3 majority of the total membership of the Council.

(3) If the Office of Mayor becomes vacant for any reason other than the termination of his office in accordance with Section 15(3) this vacancy shall be filled as soon as possible by a special election.

(4) If the office of Mayor becomes vacant because of his dismissal under Subsection (2), the Council shall elect an Acting Mayor to perform the functions of the Mayor until a new Mayor is elected as provided for in Subsection (3).

SECTION 17. ACTING HEAD OF THE LOCAL GOVERNMENT

(1) In the event of the absence or incapacity of the Mayor, his functions shall be performed by a member of the Executive Committee appointed by him, or, in default, by the Executive Committee.

(2) For the purpose of the performance of any function of the Mayor that a member of the Executive Committee is authorized to perform by virtue of Subsection (1), the member shall be deemed to be the Mayor, and any reference in any law or in the Rules of Procedure of the Council to the Mayor shall be read as including a reference to that member accordingly.

SECTION 18. FUNCTIONS OF THE HEAD OF THE LOCAL GOVERNMENT

SECTION 19. ESTABLISHMENT OF THE EXECUTIVE COMMITTEE

(1) An executive committee of the local government, to be known as the Executive Committee of the Kwajalein Atoll Council, is hereby established, which shall, in accordance with Section 14(1) of the Local Government Act 1980, be the principal executive arm of the local government.

(2) The Executive Committee is collectively responsible to Council for the executive government of the local government area, and for the performance of the functions of the Executive Committee and the members of the Executive Committee under this Constitution, any ordinance of the local government or a Central Government law.

SECTION 20. COMPOSITION

(1) The Executive Committee shall consist of -

- (a) the Mayor; and
- (b) five members of the Council appointed by the Mayor in writing, to be known as Executive Members.

(2) The quorum for a meeting of the Executive Committee is three.

SECTION 21. VACATION OF OFFICE

(1) The office of the Mayor becomes vacant in accordance with Section 16.

(2) The office of an Executive Member becomes vacant if, and only if -

- (a) his seat in the Council becomes vacant under Section 8; or
- (b) the office of the Mayor becomes vacant under Section 16; or
- (c) he is dismissed from office under Subsection (3); or
- (d) he resigns his office by notice in writing to the Mayor.

(3) The Mayor may at any time, with or without cause, dismiss an Executive Member referred to in Section 21(1)(b) and (c) from office.

(4) If the office of the Mayor becomes vacant otherwise than by reason of his dismissal under Section 16(2), the Executive Members shall continue to perform their functions (including the function of appointing under Section 17 a member of the Executive Committee to perform the function of the Mayor).

(5) If the office of an Executive Member becomes vacant by reason of the termination of the term of his office as a member of the Council under Section 7, he may continue to perform the functions of an Executive Member until a new Mayor is elected, but unless he becomes again a member of the Council he shall not vote or take part in its deliberations.

(b) appoint a member of the Council to act as an Executive Member, or both, during the absence or incapacity.

SECTION 23. ALLOCATION OF RESPONSIBILITIES TO EXECUTIVE MEMBERS

(1) Subject to this Constitution, any Ordinance of the local government and any Central Government law, the Mayor may from time to time allocate to an Executive Member responsibility for matters within the competence of the Executive Committee (including responsibility for the administration of Ordinances of the local government).

(2) The Mayor is responsible for any matter responsibility for which is not for the time being allocated under Subsection (1).

(3) Nothing in this section affects the collective responsibility of the Executive Committee under Section 19(2).

SECTION 24. FUNCTIONS OF THE EXECUTIVE COMMITTEE

The Executive Committee has such powers, functions, duties and responsibilities as are conferred or imposed on it by this Constitution, an Ordinance of the local government or a Central Government law.

SECTION 25. ADVICE TO THE COUNCIL, ETC., OF CERTAIN MATTERS

(1) The Mayor shall promptly notify the Council and the Minister of the Government of the Marshall Islands responsible for local government matters of -

(a) the appointment, dismissal or resignation of a member of the Executive Committee; or

(b) the appointment, or the termination of the appointment, of a member of the Council to act as an Executive Member under Section 22(b); or

(c) the appointment by him of a member of the Executive Committee to perform the functions of the Mayor under Section 17(1); or

(d) the allocation under Section 23(1) of responsibilities to Executive Members to perform functions of another Executive Member.

(2) The Executive Committee shall promptly notify the Council and the Minister of the Republic of the Marshall Islands responsible for local government matters of the appointment by it of a member of the Executive Committee to perform the functions of the Mayor under Section 17(1).

(3) The Clerk of the local government shall promptly notify the Council and the Minister of the Republic of the Marshall Islands responsible for local government matters of the resignation of the Mayor under Section 16(2), or of the dismissal of the Mayor under Section 16(2).

PART V - FINANCE

SECTION 26. CONTROL OF REVENUE AND EXPENDITURE

(1) No taxes shall be imposed and no other revenue shall be raised, and no money of the local government shall be expended, unless authorized by law.

(3) All money received by the local government shall, unless otherwise authorized by Ordinance of the local government or by or under Local Government Financial Memoranda issued under Section 41(2) of the Local Government Act 1980, be paid into a fund or account established in accordance with such an Ordinance or the Financial Memoranda.

SECTION 27. FINANCIAL RESPONSIBILITY OF THE EXECUTIVE COMMITTEE

(1) It is the responsibility of the Executive Committee to make proposals to the Council on all matters relating to the budget, and in particular the Executive Committee shall make recommendations to the Council for the raising of taxes and other revenue, and for the expenditure of money of the local government.

(2) The Executive Committee is accountable to the Council for all expenditure of money of the local government and for relating such expenditure to appropriations made by the Council or to other authority conferred by this Constitution, an Ordinance of the local government or a Central Government law.

(3) Except on the recommendation or with the consent of the Executive Committee, signified by or on behalf of the Mayor, the Council shall not make or approve any Ordinance or other proceeding introduced by a member other than the Mayor or an Executive Member if the Ordinance or proceeding would, in the opinion of the member of the Council presiding -

(a) dispose of or charge any of the revenues of the local government; or

(b) revoke or alter (otherwise than by way of reduction) any such disposition or charge; or

(c) impose, alter or abolish any tax, rate, due, fee or fine.

SECTION 28. BUDGETS AND APPROPRIATIONS

(1) The Executive Committee shall cause to be introduced into the Council in respect of each financial year -

(a) a set of budget estimates of revenue and expenditure; and

(b) an Appropriation Ordinance to make appropriations for expenditure, and may introduce additional supplementary estimates and Supplementary Appropriation Ordinances.

(2) Subject to any Local Government Administrative Memoranda issued under Section 41(1)(a) of the Local Government Act 1980 in relation to the format of Ordinances and to any Local Government Financial Memoranda issued under Section 41(2) of that Act, Appropriation Ordinances and Supplementary Appropriation Ordinances shall follow the general form of Central Government Appropriation Bills and Supplementary Appropriation Bills under Article VIII, Sections 6 and 8 of the Constitution of the Marshall Islands.

(3) Subject to any Local Government Financial Memoranda issued under Section 41(2) of the Local Government Act 1980, an Ordinance of the local government may make provision, in accordance with the principles of Article VIII, Sections 7 and 9 of the Constitution of the Marshall Islands, for anticipated and re-programmed expenditure and a Contingencies Fund.

(5) Appropriations lapse at the end of financial year to which they, respectively relate, unless, in relation to any particular head of appropriation, an Ordinance of the local government provides otherwise.

SECTION 29. LOANS

The local government shall not accept loans, grant charges against its future revenue, or incur indebtedness chargeable to future revenue which extends beyond the next five full financial years, and shall not in any financial year incur any indebtedness or grant any charge against future revenue such that the total liability of the local government in that year for debt services exceeds 15% of the estimated revenue for that year, as provided in Section 50 of the Local Government Act 1980.

SECTION 30. ACCOUNTS

(1) The Executive Committee shall cause to be kept full and proper accounts and records of revenue and expenditure of the local government, assets of or under the control of the local government and liabilities of the local government.

(2) The accounts and records shall comply with -

(a) any Local Government Financial Memoranda issued under Section 41(2) of the Local Government Act 1980; and

(b) subject to such memoranda and directions, any Ordinance of the local government.

(3) The Executive Committee shall, as soon as practicable after the end of a financial year, lay before the Council accounts relating to all revenues and expenditures of the local government for that financial year, together with any report of the audit of the accounts under Section 31.

SECTION 31. AUDIT

(1) In addition to the audit provided for by Section 35 of the Local Government Act 1980, the Auditor-General or a person authorized by him may at any time audit the accounts laid or to be laid before the Council under Section 30(3).

(2) The Auditor-General or authorized person shall report to the Council and to the Minister of the Republic of the Marshall Islands responsible for local government matters on the audit and shall, in his report, draw attention to any irregularities in the accounts and records, or in the accounts, as the case may be.

(3) For the purpose of an audit under Subsection (1), the Auditor-General or authorized person has the powers and rights referred to in Article VIII, Section 15 of the Constitution of the Marshall Islands.

SECTION 32. FINANCIAL MEMORANDA

Subject to this Constitution, all persons concerned with the financial administration of the local government shall comply with any Local Government Financial Memoranda issued under Section 41(2) of the Local Government Act 1980.

PART VI. - STAFF

(2) The local government is the employer of the Clerk and the other officers and employees.

(3) The terms and conditions of appointment and employment of the Clerk and the other officers and employees shall be determined by or under an Ordinance of the local government, and in the absence of such an Ordinance are, with the necessary modifications, those of members of the Public Service holding equivalent positions, for which purpose any reference in any Central Government law to -

(a) the Chief Secretary or a Department head shall be read as a reference to the Clerk; or

(b) the Public Service Commission - shall be read as reference to the Executive Committee.

SECTION 34. SECOND, ETC., PUBLIC SERVANTS

Subject to any arrangements made under Section 16(3) of the Local Government Act 1980, and to anything to the contrary in any Ordinance of the local government, a member of the Public Service who is seconded to the local government in accordance with the section, or whose services are made available to the local government in accordance with that section, shall be deemed to be an officer of the local government for the purposes of any Ordinance of the local government other than an Ordinance prescribing terms and conditions of employment by the local government.

PART VII. AMENDMENT OF THE CONSTITUTION

SECTION 35. METHOD OF AMENDMENT

(1) This Constitution may be amended by Ordinance of the local government approved on two occasions by a two-thirds majority of the total membership of the Council, provided that not less than 30 days, or such shorter period as is approved in any particular case, and for a special reason, by the Minister of the Republic of the Marshall Islands responsible for local government matters has elapsed between the first and second such occasion.

(2) If the Minister of the Republic of the Marshall Islands responsible for local government matters recommends to the local government amendments to this Constitution, the Council shall consider those amendments, but need not adopt them with or without modification.

PART VIII - MISCELLANEOUS

SECTION 36. CENTRAL GOVERNMENT RECOMMENDATIONS AS TO ORDINANCES, ETC.

If the Minister of the Republic of the Marshall Islands responsible for local government matters recommends to the local government that an Ordinance be made, amended or repealed, the Mayor shall cause the recommendation to be presented to the Council together with the comments of the Executive Committee on it.

SECTION 37. ADVICE AS TO VALIDITY OF ORDINANCE, ETC.

(1) The Mayor may, and shall if so directed by the Council, request the Minister of the Republic of the Marshall Islands responsible for local government matters for a report by the Attorney-General on the validity of an Ordinance or proposed Ordinance of the local government, or of any action or proposed action by the local government

SECTION 38. VACANCIES

The validity of any thing done by the Council or the Executive Committee or, subject to any Ordinance of the local government and to the Rules of Procedure of the Council, of a committee of the Council is not affected by any vacancy in its membership, provided that the number necessary to form a quorum for a meeting remains.

SECTION 39. SERVICE

Where any document or thing is to be given to, served on or communicated to a local government at a time when -

(a) there is a vacancy in the office of the Mayor or the Mayor is absent or incapacitated; and

(b) there is no person appointed under Section 18, it is sufficient if it is addressed to the Clerk of the local government.

SECTION 40. EFFECTIVE DATE

This Constitution shall be effective on a date fixed by the Minister of the Republic of the Marshall Islands responsible for local government matters.