



STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
335 Merchant Street
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810
Phone No. (808) 586-2727



AMENDED AND RESTATED ARTICLES OF INCORPORATION

(Section 414D-184, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, duly authorized officers of the corporation submitting these Amended and Restated Articles of Incorporation, certify as follows:

1. The name of the corporation is:

Association of Hawaii Archivists

2. The Amended and Restated Articles of Incorporation adopted is attached.

3. The Amended and Restated Articles of Incorporation was adopted on: _____
(Month Day Year)

(Check one)

at a meeting of the **members**:

Designation (class) Of membership	Total Number of Memberships (votes) outstanding	Total Number of Votes Entitled to be Cast By each Class	Number of Votes Cast by each class For Amendment	Number of Votes Cast by each class Against Amendment
Individual	Ind.	Ind.	Ind.	Ind.
Institutional	Inst.	Inst.	Inst.	Inst.

OR

by written consent of the **members** holding at least eighty per cent of the voting power.

OR

by a sufficient vote of the **Board of Directors** or **incorporators** because member approval was not required.

4. Check one:

The written approval of a specified person or persons named in the articles of incorporation was obtained.

The written approval of a specified person or persons is not required.

5. The attached Amended and Restated Articles of Incorporation supersedes the original Articles of Incorporation and all amendments thereto.

The undersigned certifies under the penalties of Section 414D-12, Hawaii Revised Statutes, that the undersigned has read the above statements, I/we are authorized to make this change, and that the statements are true and correct.

Signed this _____ day of _____, _____

(Type/Print Name & Title)

(Type/Print Name & Title)

(Signature of Officer)

(Signature of Officer)

AMENDED AND RESTATED
ARTICLES OF INCORPORATION

ASSOCIATION OF HAWAII ARCHIVISTS
(A Hawaii nonprofit corporation)

ARTICLE I

CORPORATE NAME

The name of the Corporation is Association of Hawai'i Archivists (referred to in these articles of incorporation as the "Corporation").

ARTICLE II

PRINCIPAL OFFICE; REGISTERED AGENT; INCORPORATORS

Section 2.1 Mailing Address of Principal Office. The mailing address of the Corporation's principal office is P.O. Box 1751, Honolulu, Hawaii 96806.

Section 2.2 Registered Agent and Street Address For Service of Process. The Corporation shall have and continuously maintain in the State of Hawaii a registered agent who shall have a business address in this State. The agent may be a commercial registered agent authorized to transact business in this State, a person who has a place of business in this State, or the title of an officer or other person with the entity who has a business office in this State.

- 1) The Corporation's registered agent in the State of Hawaii is the President of the Corporation.
- 2) The street address of the place of business of the person in the State of Hawaii to which service of process and other notice and documents being served on or sent to the entity represented by the person may be delivered to is 110 N. Hotel Street, Honolulu, Hawaii 96817.

The State of Hawaii Department of Commerce and Consumer Affairs will have the most current information on the agent and address for service.

Section 2.3 Incorporators. The names and addresses of the incorporators are as follows:

Mary Ann Akao, 1114 Wilder Avenue, #504, Honolulu, Hawaii 96822.
Susan Campbell, 1309 Kuuna Street, Kailua, Hawaii 96734.

ARTICLE III

CORPORATE PURPOSES AND FORM OF ORGANIZATION

Section 3.1 Purposes. The Corporation is organized exclusively for charitable, literary or educational purposes under Section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding provision of any future federal tax code, including for such purposes as follows:

- 1) To promote cooperation and exchange of information,
- 2) To disseminate information on research materials and archival methodology,
- 3) To provide a forum for the discussion of matters of common concern,
- 4) To collaborate with the Society of American Archivists in its objectives and with similar cultural and educational organizations in furtherance of the Corporation's exempt purposes.

All such activities, and others for which nonprofit corporations may be incorporated under Chapter 414D, Hawaii Revised Statutes, shall be accomplished within the meaning of Section 501(c)(3) of the Internal Revenue Code.

Section 3.2 Form of Organization.

(1) The Corporation is not organized for profit and it will not authorize or issue shares of stock. No part of the net earnings of the Corporation shall inure in whole or in part to the benefit of, or be distributable to, private shareholders or individuals, except as allowed by law. The Corporation may pay a reasonable compensation to its directors or officers for services rendered to the Corporation in furtherance of its purposes; provided, that no such payment shall be deemed to be a dividend or a distribution of income or profit.

(2) No substantial part of the activities of the Corporation shall be lobbying activities or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

(3) Notwithstanding any other provision in the articles of incorporation, the Corporation shall not carry on any activity not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future federal tax code) or by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future federal tax code).

ARTICLE IV

CORPORATE POWERS

The Corporation shall have and possess all the powers permitted to nonprofit corporations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding provision of any future federal tax code, as allowed under the laws of the State of Hawaii and the Internal Revenue Code.

ARTICLE V

CORPORATE LIFE

The Corporation shall have perpetual duration.

ARTICLE VI

DIRECTORS AND OFFICERS

Section 6.1 Board of Directors. The Board of Directors shall consist of not less than three (3) individuals. The number of directors shall be fixed and the directors selected in accordance with the bylaws. The Board shall have and may exercise all the powers of the Corporation except as otherwise provided by the articles of incorporation, bylaws, or law.

Section 6.2 Officers. The Corporation shall have the officers described in the bylaws. The officers shall have the powers, perform the duties, and be selected at such time, in such manner, and for such terms according to the bylaws.

ARTICLE VII

LIABILITY AND INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS

Section 7.1 Limitation of Liability. No director of the Corporation shall be personally liable to the Corporation or the Members for monetary damages because of a breach of the director's duties to the Corporation and the Members; provided, that such liability shall not be eliminated as provided by law and in the following circumstances:

- (1) For breach of the director's duty of loyalty to the Corporation or the Members;
- (2) For acts or omissions not made in good faith or that involve intentional misconduct or knowing violation of the law;
- (3) For transactions from which a director derived an improper personal economic benefit;
- (4) For any improper conflict of interest transaction with the Corporation in which a director had a direct or indirect interest;
- (5) For any transaction in which a director received a loan or guaranty of obligation from the Corporation; or
- (6) For any transaction where a director votes for or assents to an unlawful distribution.

Section 7.2 Definitions. The definitions summarized below, which are further defined in the Hawaii Nonprofit Corporations Act (HRS 414D-159), apply to Section 7.3:

- (1) "Director" means an individual who is or was a director of the Corporation.
- (2) "Expenses" includes counsel fees.
- (3) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, or reasonable expenses actually incurred with respect to a proceeding.
- (4) "Official capacity" means with respect to a director, the office of director in the Corporation and with respect to an officer, employee, or agent of the Corporation who is not a director, the office in the Corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Corporation.

(5) “Party” includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(6) “Proceeding” means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

Section 7.3 Indemnification. The Corporation may indemnify and advance expenses to an officer, employee, or agent of the Corporation who is not a director to the same extent as a director. An officer of the Corporation who is not a director is further entitled to mandatory indemnification under Section 7.3(3) and is entitled to apply for court-ordered indemnification under Section 7.3(5) to the same extent as a director.

(1) Authority to Indemnify. Except in connection with a proceeding by or in the right of the Corporation or in any other proceeding in which the director was found liable on the basis of the director’s improper receipt of a personal benefit (more particularly described below), the Corporation shall indemnify a former or current director made a party to a proceeding against liability if the individual:

(a) Acted in good faith, and

(b) In a manner the individual reasonably believed (i) in the case of conduct in an official capacity, that the conduct was in the Corporation’s best interests or (ii) in all other cases, that the conduct, at a minimum, did not oppose the Corporation’s best interests, and

(c) With respect to a criminal proceeding, that the individual had no reasonable cause to believe the conduct was unlawful.

A director’s conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of Subsection (1)(b)(ii), above. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, is not by itself determinative of a director’s failure to meet the standard of conduct described in this Section.

The Corporation may not indemnify a director’s liability where such liability has been determined in connection with a proceeding by or in the right of the Corporation or in any other proceeding whether or not involving action in an official capacity, in which the director was found liable on the basis of the director’s improper receipt of a personal benefit. Indemnification permitted in connection with a proceeding by or in the right of the Corporation is limited to reasonable expenses incurred in connection with the proceeding.

The Corporation shall only indemnify a director under this Section 7.3(1) if authorized in the specific case after a determination has been made that the director has met the standard of conduct set forth herein under Section 7.3(4).

(2) Advancement of Expenses. Before a final decision is made in a proceeding, the Corporation may advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to the proceeding, provided that (a) the director gives the Corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in Section 7.3(1), above, (b) agrees in writing to repay the advance if it is ultimately determined that the director did not meet the standard of conduct, and (c) the individuals making the determination, determine that the facts then known do not preclude indemnification. Such determinations and authorizations under this Section shall be made in the manner described in Section 7.3(4), below.

(3) Mandatory Indemnification. The Corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the Corporation against reasonable expenses incurred in connection with the proceeding.

(4) Determination/Authorization of Indemnification. Unless otherwise indicated or required by law, the Corporation shall make indemnification payments under Sections 7.3(1) and (2), above, only if authorized in the specific case upon a determination that the director seeking indemnification has met the standard of conduct required in those sections. The determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who are not at the time parties to the proceeding, or (b) if such quorum is not obtainable, by a majority vote of a committee duly designated by the Board (in which designation directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding, or (c) if a committee cannot be designated, by special legal counsel selected by the Board or its committee in the manner prescribed in Subsections (a) or (b), or a majority vote of the full Board (in which selection directors who are parties may participate), or (d) the determination shall be made by the Members but directors who are at the time parties to the proceeding may not vote on the determination.

Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if special legal counsel makes the determination, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under Subsection (c) to select counsel.

(5) Court-Ordered Indemnification. A director who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or another court of competent jurisdiction. On receipt of the application, the court after giving any notice it

considers necessary may order indemnification in an amount it considers proper if it determines (a) that the director is entitled to mandatory indemnification under Section 7.3(3), in which case the court shall also order the Corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification, or (b) the director is fairly and reasonably entitled to indemnification under all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 7.3(1), above, or was found liable in connection with a proceeding by or in the right of the Corporation, or any other proceeding whether or not involving action in an official capacity, in which the director was found liable on the basis of the director's improper receipt of a personal benefit, but if the director was found liable indemnification is limited to reasonable expenses incurred.

(6) Director as a Witness in a Proceeding. This Section 7.3 shall not limit the Corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

(7) Insurance. The Corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the Corporation against liability asserted against or incurred by the individual in that capacity.

ARTICLE VIII

MEMBERSHIP

The Corporation will have Members. The Members shall consist of the following two classes of Membership: Individual Membership and Institutional Membership. All Members in good standing shall enjoy all the benefits of Membership, with such limitations as described in the bylaws and determined by the Board of Directors, and have the right to vote on matters submitted to a vote of the Members. Members who are not in good standing shall not enjoy the benefits of Membership and not have a right to vote on matters submitted to a vote of the Members.

ARTICLE IX

CORPORATE LIABILITY

The property of the Corporation shall alone be available in law for the debts and liabilities of the Corporation. The directors and officers of the Corporation shall incur no personal liability for said debts and liabilities by reason of such positions, except as otherwise provided by law.

All checks and other orders for the payment of money, notes, contracts, and all other instruments shall be signed by such individual or individuals as the Board of Directors shall designate by resolution and as indicated in the bylaws. Unless so authorized, no person shall have any power or authority to bind the Corporation by any contract or other instrument or to pledge its credit or to render it liable for any purpose or amount.

ARTICLE X

CORPORATE DISSOLUTION

After appropriate notice provided to the attorney general and upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government or to a state or local government for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located exclusively for such purposes or to such organization or organizations, as the court shall determine, which are organized and operated exclusively for such purposes.

ARTICLE XI

ADOPTION AND AMENDMENT OF ARTICLES AND BYLAWS

These articles of incorporation may be amended or restated from time to time in the manner provided by the bylaws and the Hawaii Nonprofit Corporations Act, Chapter 414D of the Hawaii Revised Statutes, as amended.

The bylaws may be altered, amended, or repealed or new bylaws may be adopted in the manner provided by the bylaws.

These amended and restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and the restated articles of incorporation supersede the original articles of incorporation and any amendments thereto.

(06.15.2020 draft)