

**Subject**

**ASSESSMENT OF FEES FOR RELEASE OF SIDEWALK-NUISANCES UNDER  
HONOLULU ORDINANCE 13-8 (2013),  
RELATING TO NUISANCES ON PUBLIC SIDEWALKS**

**Subject Matter Expert**

City and County of Honolulu, Department of Facility Maintenance (the "DFM")

**Reference**

City and County of Honolulu Ordinance 13-8 (2013), Relating to Nuisances on Public Sidewalks ("Ordinance 13-8")

**Purpose**

To establish guidelines under Ordinance 13-8 for (1) the waiver of fees for release of necessities; (2) the appeal of a fee assessment to reclaim a sidewalk-nuisance based on petitioner's inability to pay the fee; and (3) prepayment of fees to reclaim a sidewalk-nuisance prior to a hearing to contest removal of the sidewalk-nuisance.

**I. POLICY**

Pursuant to Ordinance 13-8, an owner or the owner's authorized representative may reclaim a sidewalk-nuisance within the required period of time after providing satisfactory proof of identity and entitlement and paying to the city a \$200 fee for the city's cost of removal, storage and handling of the sidewalk-nuisance.<sup>1</sup>

Ordinance 13-8 allows the owner of a sidewalk-nuisance removed pursuant to Ordinance 13-8 to contest the removal by submitting a written request for a hearing to the Director and Chief Engineer of DFM (the "Director and Chief Engineer") that is received by the Director and Chief Engineer no later than 25 calendar days after removal of the sidewalk-nuisance. Ordinance 13-8 limits the appeal to a determination of whether the sidewalk nuisance was properly removed and the fee properly assessed pursuant to Ordinance 13-8.<sup>2</sup>

As provided herein, (1) the Director and Chief Engineer may waive the assessment of fees for individuals reclaiming necessities; (2) a hearings officer may grant the waiver of a fee assessment for a petitioner who properly demonstrates that the payment of the fee assessment would be onerous for the petitioner; and (3) a petitioner may pre-pay a fee and reclaim a sidewalk-nuisance prior to the hearing to contest the removal of such sidewalk-nuisance.

**II. PROCEDURES**

**A. Assessment of Fees for Necessities:**

1. An assessment of fees may be waived by the Director and Chief Engineer, without hearing, for individuals reclaiming any necessities; provided that the waiver shall be limited to only such necessities. In the event the Director and Chief Engineer waives such fees for such necessities, only the necessities shall be released.
2. For purposes of this section:

"Necessities" means objects that are necessary, essential or indispensable to daily life

<sup>1</sup> See Section 29-...3(c) of Ordinance §13-8.

<sup>2</sup> See Section 29-...3(d) of Ordinance §13-8.

for a reasonable person similarly situated and that are irreplaceable or that require undue hardship to replace, including, but not limited to, personal identification, birth certificates, prescription medication, and mobility devices.

**B. Waiver of Fees Where Petitioner is Without Funds to Pay Fee:**

1. **Application to Waive Sidewalk-Nuisance Fee Form (Exhibit 1).**  
Where a petitioner is without funds to pay the fee, the petitioner may appeal the assessment of such fee due to petitioner's financial status by properly completing and filing an application for waiver of the fee (the "Application to Waive Fee") with the Director and Chief Engineer. An Application to Waive Fee must be filed not less than fifteen (15) business days (days other than Saturdays, Sundays and city holidays) before the hearing. Except as set forth in subsection II.B.2 below, the petitioner must properly file a written request for hearing before filing the Application to Waive Fee.
2. **Application to Waive Fee May Serve as Notice to Contest Removal.**  
A completed Application to Waive Fee filed with the Director and Chief Engineer prior to the mandatory filing deadline set forth in Section 29-\_\_3(d) of Ordinance 13-8 may serve as a written request for hearing, provided that the hearing shall be limited to a determination of whether a fee was properly assessed.

The filing of an Application to Waive Fee only supports a claim for waiver of the fee assessment for a sidewalk-nuisance. If the petitioner only files an Application to Waive Fee and does not file a written request to contest the removal of a sidewalk-nuisance prior to the mandatory filing deadline, petitioner's right to contest such removal will be waived.

3. **Determination by Hearings Officer.**  
A petitioner must clearly demonstrate that the payment of the fee assessment would be onerous for the petitioner. If the hearings officer is satisfied that the petitioner is unable to pay all or any portion of a fee, the hearings officer may waive or reduce the fee assessment, regardless of whether the sidewalk-nuisance was properly removed pursuant to Ordinance 13-8. The hearings officer shall evaluate all factors, circumstances and evidence supplied in support of a fee waiver request when making a final determination. Each case is unique and will be considered on its own merits.

**C. Pre-Payment of Fees Subject to Hearing**

1. After timely filing a written request for a hearing to contest the removal of a sidewalk-nuisance, the petitioner may, at petitioner's option, pre-pay the fee and immediately reclaim a sidewalk-nuisance prior to the hearing; provided that petitioner first provides written notice of petitioner's intent to pre-pay the fee subject to the outcome of the hearing.
2. If the decision of the hearings officer is in favor of petitioner, the city will return to petitioner the pre-paid fee assessment, without interest. If the decision of the hearings officer is in favor of the city, the city shall retain the pre-paid fee assessment.

CITY AND COUNTY OF HONOLULU  
DEPARTMENT OF FACILITY MAINTENANCE

_____ )	
Petitioner, )	
vs. )	DOCKET NO. _____
Department of Facility Maintenance, )	
City and County of Honolulu. )	
_____ )	

APPLICATION TO WAIVE SIDEWALK-NUISANCE FEE

Affidavit in Support of the Application	Instructions
<p>I am the petitioner in this case and declare that payment of the fee assessment to reclaim my sidewalk-nuisance would be financially onerous for me. I declare under penalty of perjury that the information below is true and understand that a false statement may result in the imposition of criminal penalties.</p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or explain your answer, attach a separate sheet of paper identified with your name, your case docket's number, and the question number.</p>
<p>I authorize the release to the City and County of Honolulu of any information, including the release of my Federal tax returns and consumer credit report, that the City needs to determine my eligibility.</p>	
Signed: _____	Date: _____

**Penalties:** Criminal penalties may be imposed for false statements you do not believe to be true. See Chapter 710, Part V of the Hawaii Revised Statutes, as amended.

**Disclosure:** The information you provide is voluntary. However, failure to provide the requested information may delay a final decision or result in a denial of the fee waiver request. City will maintain confidentiality of information to extent provided by law.

**Information and Evidence:** The hearings officer may ask you for information and evidence. You may be ordered to answer questions at the hearing about your ability to pay the assessed fee and to provide proof of eligibility for fee waiver.

**Waiver of Right to Contest Removal:** This application only supports a claim for waiver of the fee assessment for a sidewalk-nuisance. If you file only this application and do not file a written request to contest the removal of a sidewalk-nuisance prior to the mandatory filing deadline, you will waive your right to contest the removal.

1. Your full name and current mailing address.
  
2. Your daytime phone number; your e-mail address (optional).
  
3. Are you waiving your right to contest the removal of the sidewalk-walk nuisance?
  - YES, I am only requesting a waiver of the fee.
  
  - NO, I am also contesting the removal of the sidewalk-nuisance.  
**If you check "NO", you must attach a short and plain statement of (a) all pertinent facts and (b) the relief requested and reasons therefore.**
  
4. For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly income during the past 12 months		Income amount expected next month	
	You	Spouse	You	Spouse
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property ( <i>such as rental income</i> )	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement ( <i>such as social security, pensions, annuities, insurance</i> )	\$	\$	\$	\$
Disability ( <i>such as social security, insurance payments</i> )	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$

Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify)	\$	\$	\$	\$
<b>Total monthly income:</b>	\$	\$	\$	\$

5. List your employment history for the past two years, most recent employer first. (*Gross monthly pay is before taxes or other deductions.*)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

6. List your spouse's employment history for the past two years, most recent employer first (*Gross monthly pay is before taxes or other deductions.*)

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

7. How much cash do you and your spouse have? \$ \_\_\_\_\_  
Below, state any money you or your spouse has in any other financial institution.

Financial institution	Type of account	Account Balance	Spouse's Account Balance
		\$	\$
		\$	\$
		\$	\$

8. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Assets owned by you or your spouse	
Home (value)	\$
Other real estate (value)	\$
Motor vehicle #1 (value)	\$
Make and year:	
Model:	

Registration #:	
Motor vehicle #2 ( <i>value</i> )	\$
Make and year:	
Model:	
Registration #:	
Other assets ( <i>value</i> )	\$
Other assets ( <i>value</i> )	\$

9. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$

10. State the persons who rely on you or your spouse for support.

Name (or, if under 18, initials only)	Relationship	Age

11. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$	\$
Utilities ( <i>electricity, heating fuel, water, sewer, and telephone</i> )	\$	\$
Home Maintenance ( <i>repairs and upkeep</i> )	\$	\$
Food	\$	\$

Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation <i>(not including motor vehicle payments)</i>	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes <i>(not deducted from wages or included in mortgage payments) (specify):</i>	\$	\$
Installment payments		
Motor vehicle:	\$	\$
Credit card <i>(name):</i>	\$	\$
Department store <i>(name):</i>	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm <i>(attach detailed statement)</i>	\$	\$
Other <i>(specify)</i>	\$	\$
<b>Total monthly expenses:</b>	\$	\$

12. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes       No      If yes, describe on an attached sheet.

13. Provide any other information that will help explain why you cannot pay the costs of these proceedings.

14. Identify the city and state of your legal residence.

Your age: \_\_\_\_\_ Your years of schooling: \_\_\_\_\_