DEPARTMENT OF PARKS AND RECREATION

Repeal of City and County of Honolulu Administrative Rules Governing the Sale of Message-bearing Merchandise by Nonprofit Organizations in City Parks and Facilities, and Adoption of Chapter 19-18

August 14,2017

SUMMARY

1. City and County of Honolulu Administrative Rules Governing the Sale of Message-bearing Merchandise by Nonprofit Organizations in City Parks and Facilities, is repealed.

2. Chapter 19-18, City and County of Honolulu Administrative Rules, is adopted.

CITY AND COUNTY OF HONOLULU ADMINISTRATIVE RULES

RULES AND REGULATIONS RELATING TO THE SALE OF MESSAGE-BEARING MERCHANDISE BY NONPROFIT ORGANIZATIONS IN CITY PARKS AND FACILITIES

REPEALED

§§1 to 18 Repealed [R 8/14/17]

CITY AND COUNTY OF HONOLULU ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF PARKS AND RECREATION

CHAPTER 18

SALE OR DISTRIBUTION OF EXPRESSIVE MATERIALS

Subchapter 1 General Provisions

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SUBCHAPTER 1

GENERAL PROVISIONS

§19-18-1 Purpose. This chapter recognizes and sets forth the rights and privileges of individuals or groups to distribute expressive materials in parks designated in this chapter under the jurisdiction, management, and operation of the department of parks and recreation of the City and County of Honolulu. Specifically, the purposes of this chapter are to:

(1) Provide for the exercise of constitutional freedoms, commensurate with ensuring the normal functioning of government activities;

(2) Provide safe, orderly, convenient, and efficient use of and enjoyment of city parks by the general public;
(3) Regulate competing use of park space to ensure maximum use of limited park space;
(4) Ensure users of city parks free access across the park lands and free access to, among, and between facilities on those park lands;
(5) Prevent interference with normal pedestrian or vehicular traffic on city parks, and between facilities of those city parks; and
(6) Prevent interference with or disruption of government functions or facilities at city parks. [Eff SEP - 8 2017] (Auth: RCH §4-105; ROH §10-1.3) (Imp: ROH §10-1.3)

§19-18-2 Application. These rules govern the sale or distribution of expressive materials in public parks designated in this chapter under the jurisdiction, management, and operation of the department of parks and recreation. [Eff SEP - 8 2017] (Auth: RCH §6-1403; ROH §§ 1-9.1, 10-1.3) (Imp: ROH §10-1.3)

§19-18-3 Definitions. As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"City" means the city and county of Honolulu.

"Department" or "DPR" means the department of parks and recreation, city and county of Honolulu.

"Director" means the director of the department of parks and recreation.

"DPR" means the department of parks and recreation.

"Expressive materials" means any written or printed material, including but not limited to books, pamphlets, handbills, cards, circulars, pictures, magazines, and leaflets, containing political, religious, philosophical or ideological messages. The term does not include other items of

merchandise, such as, but not limited to, food, drink, coffee mugs, beverage containers, sunglasses, flags, records, patches, maps, jewelry, handicraft, decals, audio or video tapes, shirts, hats, ties, shorts, or any other clothing articles, or footwear.

"Facilities" means public structures or improvements on lands regulated by this chapter.

"First Amendment activities" means expressive activities involving speech or conduct, the principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of political, religious, philosophical, or ideological opinions, views, or ideas and for which no fee is charged or required as a condition or participation in or attendance at such activity.

"Person" means an individual or organization.

"ROH" means Revised Ordinances of Honolulu 1990, as amended.

"Sale" means the transfer of money, including monetary donations, in exchange for expressive materials or any other item.

"Solicit" means to ask, implore, plead for, to endeavor to obtain by asking, to importune, or to try to obtain. [Eff SEP - 8 2017] (Auth: RCH §6-1403; ROH §1-9.1) (Imp: ROH §10-1.3)

§19-18-4 Jurisdiction. These rules shall apply to all properties under the control and jurisdiction of the department of parks and recreation. [Eff SEP - 8 2017] (Auth: RCH §6-1403; ROH §§1-9.1, 10-1.3) (Imp: §10-1.3)

§19-18-5 Soliciting activities. The solicitation of funds or donations or sale or distribution of expressive materials is permitted in city parks. [Eff SEP - 8 2017] (Auth: RCH §6-1403; ROH §§1-9.1, 10-1.3) (Imp: §10-1.3)

§19-18-6 Sale or distribution of expressive materials. (a) The sale or distribution of expressive materials is allowed in city parks so long as such activities do not interfere with other lawful activities taking place in the parks and comply with other provisions of this chapter. However, the use of a portable table to sell or distribute expressive materials in city parks, in sizes and numbers permitted under these rules, is allowed pursuant to a permit for such use issued by the department.

(b) No other structure or equipment or park surface, including, but not limited to chairs, display mats, shelving, umbrellas, tents, canopies, podiums, or platforms, shall be used to sell or distribute expressive materials on park land.

(c) An application for a permit to use a portable table to sell or distribute expressive materials in a city park, in sizes and numbers permitted shall set forth the name of the applicant, the name of the organization (if any), the date, time, duration, and location of the proposed sale or distribution, the number of participants, a statement of equipment or facilities to be used, and any other information required by the permit application form. Permittees shall display a copy of this application in plain view on any permitted portable table.

(d) The department shall not accept an application more than one year before the proposed requested dates; applications received more than a year in advance will be returned to the applicant.

(e) Only one portable table may be used by the permittee per site which portable table may be no larger than twelve square feet for each permittee engaging in the sale or distribution of expressive materials.

(f) The director shall designate on maps, copies of which shall be available for inspection at all city park district offices, at the office of the director and posted on the city website, the locations within park land for the placement of portable tables. Locations may be designated as not available for issuance of permits, only if activities under the permit would:

(1) Cause injury or damage to park resources;
(2) Obstruct or impede pedestrian or vehicle ingress, egress or access;
(3) Unreasonably impair the atmosphere of peace, tranquility, or recreation maintained in public park land;
(4) Unreasonably interfere with interpretive, visitor service, or other park program activities;
(5) Substantially impair the operation of public use facilities or services of City concessionaires or contractors; or
(6) Present a clear and present danger to the public health and safety.

(g) The permit may contain such conditions as are reasonably consistent with protection and use of park land for the purposes for which the park land is managed and to prevent interference with normal pedestrian or vehicular traffic or disruption of government functions or facilities.

(h) Permittee shall remove the portable table at the end of each day and shall use its best efforts to remove any litter within the designated site generated by the sale or distribution of expressive materials.

(i) No permit shall be issued for a period in excess of fourteen consecutive days, provided, that a permit may be extended for a like period, upon a new application, unless another applicant has requested use of the same location for the same time period and multiple occupancy of that location is not reasonably possible.

(j) Should the number of applications for a permit exceed the available area at a particular location and time, the director reserves the right to allocate spaces for which permit applications were received on the basis of a shared use concept.

(k) No person shall engage in the sale or distribution of expressive materials so as to obstruct, impede or interfere with the free movement of pedestrians, traffic or any authorized activities within the park; obstruct, impede or interfere with the work of

any city personnel in the park; harass visitors to park land, either verbally or with physical contact; misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the expressive materials is available without cost or donation.

(l) The director shall, without unreasonable delay and provided an application is submitted with reasonable timeliness, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular location;

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety;

(3) The number of persons engaged in the sale or distribution of expressive materials exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to park land or facilities, impairment of the park's atmosphere of peace, tranquility, or recreation on park land, interference with program activities, or impairment of public use facilities;

(4) The location applied for has not been designated as available for the placement of portable tables to facilitate the sale or distribution of expressive materials;

(5) The application was submitted more than one year before the date and time requested; or

(6) The activity would constitute a violation of an applicable law or regulation.

(m) If a permit is denied, the applicant shall be informed in writing, with the reason(s) for the denial set forth.

(n) A permit may be revoked under any of the conditions listed in paragraph (l) that constitute

grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension of the permit may be made, to be followed with a written confirmation within seventy-two hours.

(o) Violation of the terms and conditions of a permit issued in accordance with this section may result in the revocation of the permit.

(p) The provisions of this section shall not apply to a request by an applicant for the use of portable table(s) for the sale or distribution of expressive materials in conjunction with a First Amendment activity governed by ROH 10-1.3(a)(5), as amended. [Eff SEP - 8 2017 (Auth: RCH §6-1403; ROH §§1-9.1, 10-1.3) (Imp: §10-1.3)

§19-18-7 Appeal of application denial or permit revocation. (a) An applicant aggrieved by the decision of the director to deny or revoke a permit may appeal the decision by filing a written petition of appeal with the director within 10 calendar days after receipt of written notification of the denial or revocation. An appeal submitted after the time limits prescribed in this section shall be considered untimely.

(b) A petition for an appeal shall be filed and sent to the office of the Director of Parks and Recreation, 1000 Uluohia Street, Suite 309, Kapolei, Hawaii 96707.

(c) The petition for an appeal shall contain the following information:

(1) Petitioner's name, address, and telephone number and/or cellular telephone number, and, if any, the facsimile number and/or e-mail address.

(2) The issue on appeal.

(3) A statement of the relevant facts.

(4) The remedy sought, including the rationale and legal basis in support of the requested remedy.

(5) Petitioner's signature and the date the petition is submitted to the director.

(d) The director shall set the appeal for hearing. The hearing shall be conducted in conformity with the application provisions of HRS §§ 91-9, 91-9.5, 91-10, 91-11, and 91-12.

(e) The director shall provide written notice of the hearing on an appeal to the applicant by certified mail, return receipt requested, or by publication in accordance with the provisions of HRS § 91-9.5. Petitioner shall be given written notice of the hearing at least fifteen calendar days prior to the hearing.

(f) The notice of hearing and the hearing shall be in conformity with the provisions of HRS chapter 91, relating to contested cases.

(g) All hearings shall be conducted by the director or by a hearings officer appointed by the director, who shall have the necessary powers to conduct the hearing and rule on procedural matters related thereto.

(h) At the hearing, parties shall be entitled to call witnesses, to cross-examine witnesses and make legal arguments.

(i) The hearings officer shall have the power to exclude irrelevant, immaterial or unduly repetitious evidence.

(j) At the conclusion of the hearing, the hearings officer shall provide a proposed recommended decision to the director for approval.

(k) An appeal shall be sustained if the director finds that the action of the director was arbitrary, or capricious, or characterized by abuse of discretion.

(l) Each decision and order adverse to a party to the proceeding shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the

director shall incorporate in its decision a ruling upon each proposed finding so presented.

(m) The director shall notify the parties to the proceeding by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time from the close of the hearing.

(n) Any person aggrieved by the final decision and order of the director may appeal such action to the circuit court in accordance with HRS §91-14. [Eff SEP - 8 2017](Auth: RCH §6-1403) (Imp: ROH §1-9.2; HRS §§91-9 - 91-14)

§19-18-8 Authority to close portions of a park. The director or his designee may temporarily close and/or restrict the use of all or any portion thereof of any park or park facility if the park or park facility is closed to the public due to damage, natural disaster, severe weather condition, civil disturbance, employee strike or other labor dispute, any duly declared state of emergency, or scheduled or ongoing maintenance or construction, and if such closure or restriction on use is necessary for the protection and preservation of the park or park facility or for the safety and welfare of persons or property. [Eff SEP - 8 2017] (Auth: RCH §6-1403; ROH §§1-9.1, 10-1.3) (Imp: §10-1.3)

§19-18-09 Violation. (a) Any person violating any provision of these rules shall be subject to the penalties provided in ROH sections 10-1.3(c) and 10-1.6, as amended.

(b) In addition, the department reserves the right to seize any merchandise, such as, but not limited to, food, drink, coffee mugs, beverage containers, sunglasses, flags, records, patches, jewelry, handicraft, decals, audio or video tapes, shirts, hats, ties, shorts, or any other clothing articles or footwear, being sold or distributed on park land by any person violating any provision of

this chapter. The department may dispose of any such seized items in accordance with law. [Eff SEP - 8 2017] (Auth: RCH §6-1403; ROH §§1-9.1, 10-1.3) (Imp: §10-1.3)

DEPARTMENT OF PARKS AND RECREATION

The repeal of the City and County of Honolulu Administrative Rules Governing the Sale of Message-bearing Merchandise by Nonprofit Organizations in City Parks and Facilities and the adoption of Chapter 19-18, City and County of Honolulu Administrative Rules were adopted on August 14, 2017, following a public hearing held on February 22, 2017, after public notice was given on January 20, 2017, in the Honolulu Star-Advertiser.

The foregoing rulemaking action shall take effect ten days after filing with the Office of the City Clerk.

MICHELE K. NEKOTA, Director

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel

APPROVED this 21st day of August, 2017.

KIRK CALDWELL, Mayor
City and County of Honolulu

CERTIFICATION

I, MICHELE K. NEKOTA, in my capacity as Director of the Department of Parks and Recreation, City and County of Honolulu, do hereby certify that the foregoing is a full, true and correct copy of Title 19, Chapter 18, City and County of Honolulu Administrative Rules, entitled "Sale or Distribution of Expressive Materials" that was adopted on August 14, 2017, following a public hearing held on February 22, 2017, after public notice was given on January 20, 2017, in the Honolulu Star-Advertiser.

MICHELE K. NEKOTA, Director

Received this 29th day of August, 2017

City Clerk
Glen I. Takahashi