

REGULATED ACTIVITIES

Chapter 41

REGULATED ACTIVITIES WITHIN THE CITY

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Article 1. City Seal**Sections:**

- 41-1.1 Adoption and description.**
41-1.2 Unauthorized use of seal—Penalty.

Sec. 41-1.1 Adoption and description.

- (a) The existing seal of the City and County of Honolulu, the impress, which is on file with the city clerk's office, and description which is shown below, is adopted as the new seal of the City and County of Honolulu, State of Hawaii with the following modification:

The term "Territory of Hawaii" appearing in the existing seal of the city is deleted and the term "State of Hawaii" inserted in lieu thereof.

- (b) The impress of the city's seal, which was included as a part of Ordinance No. 1730 but inadvertently omitted in the 1961 codification of ordinances, shall be reenacted herein in order to provide specific information for the benefit of the general public. The seal of the City and County of Honolulu shall be circular in shape, three inches in diameter, and of the design being described, with the tinctures added as a basis for the coat of arms as follows:

Arms. A heraldic shield quartered; first and fourth quarters bearing the stripes and colors of the Hawaiian flag; second and third quarters, on a yellow field, a white ball pierced on a staff; overall, a green escutcheon surcharge, with a five pointed yellow star in the center.

Supporters. Nuuanu Pali on the dexter side and Diamond Head on the sinister side; overall green color.

Crest. A rising sun irradiated in gold, surrounded by a legend "City and County of Honolulu-State of Hawaii."

- (c) A line drawing version of the above-described city seal shall be on file with the city clerk's office. (Sec. 1-7.1, R.O. 1978 (1983 Ed.))

Sec. 41-1.2 Unauthorized use of seal—Penalty.

- (a) (1) Whoever knowingly displays any facsimile of the seal of the City and County of Honolulu in, or in connection with, any advertisement, poster or circular, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the City and County of Honolulu or by any department, agency or instrumentality thereof, shall be guilty of a misdemeanor.
 (2) Subdivision (1) shall not be construed to apply to the use of a facsimile of the seal in any newspaper, periodical, book, pamphlet or stationery where the facsimile of the seal is printed for informational purposes only to indicate that any article or printed matter therein originated from authorized sources of the City and County of Honolulu.
- (b) (1) Whoever, except when authorized in writing by the city council for official use of the city, knowingly manufactures, reproduces, sells or purchases for resale, either separately or appended to any article manufactured or sold, any facsimile of the seal of the City and County of Honolulu, or any substantial part thereof, shall be guilty of a misdemeanor.
 (2) As used in this subsection, the term "sell" shall be broadly construed to include transactions involving cash donations to the seller and/or the seller's agent or representative.
- (c) As used in this section, the term "facsimile" shall mean the use of the seal as described or impressed or the gold color replica or any combination thereof found in Section 41-1.1 of this article.
- (d) The provisions of this section shall not apply to the noncommercial manufacture or reproduction for display, or the noncommercial display, of a facsimile of the seal of the City and County of Honolulu described in Section 41-1.1, on that certain vessel of the United States Navy known as the USS Honolulu (SSN-718). (Sec. 1-7.2, R.O. 1978 (1983 Ed.); Am. Ord. 01-54)

Article 2. Auctions*

[*Editor's Note: The title of Article 2 was amended from "Auction Rooms" to "Auctions" by Ordinance No. 95-04.]

Sections:

- 41-2.1 Definitions.
- 41-2.2 Legislative intent.
- 41-2.3 Exceptions.
- 41-2.4 Applicability.
- 41-2.5 License required.
- 41-2.6 Fee.
- 41-2.7 Authority to conduct auctions.
- 41-2.8 Adverse interest in auctioneer prohibited.
- 41-2.9 Restriction on property to be sold.
- 41-2.10 Inventory and affidavit of ownership required.
- 41-2.11 Receipts to purchasers required.
- 41-2.12 Violation—Penalty.

Sec. 41-2.1 Definitions.

"Auction" means a sale, offering for sale, or exposing for sale to the highest bidder of any goods, wares, merchandise or other property in an auction room.

"Auctioneer" means any person who is licensed by the director pursuant to HRS Chapter 445 and this article, as amended, to sell goods, wares, merchandise or other property at auction.

"Director" means the director of finance of the city or the director's duly authorized subordinates.

"Public auction room" means the same as defined in HRS Section 445-22.

(Sec. 13-1.1, R.O. 1978 (1983 Ed.); Am. Ord. 95-04)

Sec. 41-2.2 Legislative intent.

It is declared to be the legislative intent of the council to limit the use of public auctions to the sale of goods, wares, merchandise or other property which cannot be disposed of through the usual channels of trade, and to prohibit the use of public auctions for disposal of other goods, wares, merchandise or property to the public as an established merchandising practice. (Sec. 13-1.2, R.O. 1978 (1983 Ed.); Am. Ord. 95-04)

Sec. 41-2.3 Exceptions.

Nothing contained in this article shall be construed to apply to any type of auction excepted from the requirements of HRS Section 445-22. (Sec. 13-1.3, R.O. 1978 (1983 Ed.); Rec. Ord. 95-04)

Sec. 41-2.4 Applicability.

Any auctioneer who is otherwise licensed shall comply with the provisions of HRS Chapter 445 and this article as a condition of the auctioneer's license. (Added by Ord. 95-04)

Sec. 41-2.5 License required.

It shall be unlawful for any person to sell, offer for sale, or expose for sale at public auction, any personal property without obtaining a license issued by the director in accordance with the terms, conditions and penalties enumerated in HRS Chapter 445 and this article. (Added by Ord. 95-04)

Sec. 41-2.6 Fee.

The annual fee for a license to sell, offer for sale, or expose for sale any property at auction, shall be \$100.00, payable to the director. (Added by Ord. 95-04)

Sec. 41-2.7 Authority to conduct auctions.

It is unlawful for any person, other than the auctioneer who has obtained a license, to conduct an auction; provided, that the auctioneer may appoint an agent or assistant who may conduct the auction in the auctioneer's presence. Where the licensee is a corporation, it shall appoint and designate a natural person to be its "auctioneer," within the meaning of this article. (Sec. 13-1.4, R.O. 1978 (1983 Ed.); Am. Ord. 95-04)

Sec. 41-2.8 Adverse interest in auctioneer prohibited.

Every auctioneer conducting an auction shall, in accepting a bid from any person, become the agent of such bidder and remain so until a higher bid is accepted, or until the transaction involving the bid is completed. It is unlawful for the auctioneer to auction, or offer for auction, any goods, wares or other property in which the auctioneer has a proprietary interest adverse to that of the bidder. (Sec. 13-1.5, R.O. 1978 (1983 Ed.); Am. Ord. 95-04)

Sec. 41-2.9 Restriction on property to be sold.

It is unlawful for any person to sell, offer for sale, or expose for sale in a public auction, any goods, wares, merchandise or other property which were acquired for the purpose of resale by the owner thereof, unless the owner:

- (a) Has been continuously engaged in the business of selling such property through the channels of trade within the city, other than by auction for a period of not less than one year immediately preceding the commencement of the auction; and
 - (b) Has had the property in the owner's possession for a period of not less than six months.
- (Sec. 13-1.6, R.O. 1978 (1983 Ed.); Am. Ord. 95-04)

Sec. 41-2.10 Inventory and affidavit of ownership required.

(a) Every auctioneer conducting an auction shall, prior to such sale, mark or tag each article to be offered at such sale with a distinctive number, and shall file with the chief of police an inventory, listing each article and its number. The property of each owner shall be listed separately. The inventory shall contain a sworn statement specifying the ownership of the property to be sold, and an affidavit signed and sworn to by the auctioneer that the auctioneer has no proprietary interest of any nature or degree in the articles listed for sale. A copy of such inventory and statement shall be kept on the premises of the auction room, available for inspection by any person. It is unlawful for any auctioneer to falsify or fail to file such inventory and statement.

(b) It is unlawful to sell, offer for sale, or expose for sale at public auction, any property which has not been listed in the inventory required under the preceding paragraph, or any article or property which does not bear a number sufficient to identify it as a part of such inventory.

(Sec. 13-1.7, R.O. 1978 (1983 Ed.); Am. Ord. 95-04)

Sec. 41-2.11 Receipts to purchasers required.

The auctioneer shall give each purchaser at an auction a receipt with each purchase setting forth:

- (a) The name and permanent address of the auctioneer;
- (b) The date;
- (c) The price paid for the article;
- (d) The amount of tax paid;
- (e) A description of the article, and if a watch, the make and number of jewels.

(Sec. 13-1.8, R.O. 1978 (1983 Ed.); Am. Ord. 95-04)

Sec. 41-2.12 Violation—Penalty.

Any person violating any provision of this article shall, upon conviction, be punished by a fine not exceeding \$500.00, and such person's license to conduct a public auction shall be subject to suspension or forfeiture. (Sec. 13-1.9, R.O. 1978 (1983 Ed.); Am. Ord. 95-04)

(Article 3. Dancing Schools. Repealed by Ord. 97-52)

Article 3. Reserved

Article 4. Hotels

Sections:

- 41-4.1 Register requirements.
- (41-4.2 Registration required. Repealed by Ord. 01-09.)
- 41-4.2 Reserved.
- (41-4.3 Violation—Penalty. Repealed by Ord. 01-09.)
- 41-4.3 Reserved.

Sec. 41-4.1 Register requirements.

- (a) Every owner, keeper or proprietor of any hotel shall keep a register in accordance with HRS Chapter 486K.
(b) The owner, keeper or proprietor shall at all times make the register available for inspection by the chief of police upon the chief's request.
(c) A violation of subsection (a) shall be subject to punishment in accordance with state law. A violation of subsection (b) shall be subject to a fine of \$200, imprisonment for up to 30 days, or both such fine and imprisonment.
(Sec. 13-11.1, R.O. 1978 (1983 Ed.); Am. Ord. 01-09)

(Sec. 41-4.2 Registration required. Repealed by Ord. 01-09.)

Sec. 41-4.2 Reserved.

(Sec. 41-4.3 Violation—Penalty. Repealed by Ord. 01-09.)

Sec. 41-4.3 Reserved.

Article 5. Noises in Vicinity of Hospitals

Sections:

- 41-5.1 Unlawful to make loud noises.
- 41-5.2 Violation—Penalty.

Sec. 41-5.1 Unlawful to make loud noises.

- (a) It is unlawful to discharge firearms or explosives or to make any loud noises within 500 feet from the nearest point of any main hospital building with a capacity for treating not less than 36 patients.
(b) It is unlawful to conduct, operate, maintain or carry on within 500 feet from any such main hospital building any noisy or noisome workshop, factory, trade, manufacture, industry or business; provided, that this provision shall not apply to any such workshop, factory, trade, manufacture, industry or business in existence at the time of the erection of such hospital building or of an extension to a hospital building.
(c) It is unlawful for any person, in passing any hospital building of the character and capacity described, to drive or operate any vehicle in such manner as to make or create any unnecessary noise.
(Sec. 13-12.1, R.O. 1978 (1983 Ed.))

Sec. 41-5.2 Violation—Penalty.

Any person violating any provision of this article shall upon conviction be punished by a fine not exceeding \$100.00 or by imprisonment not exceeding 60 days, or by both. (Sec. 13-12.2, R.O. 1978 (1983 Ed.))

Article 6. Shooting Galleries

Sections:

- 41-6.1 Definitions.
- 41-6.2 Permit required—Fee.
- 41-6.3 Application for permit.
- 41-6.4 Qualifications of applicant.
- 41-6.5 Conditions of permit.
- 41-6.6 Display of permit.
- 41-6.7 Permits—General provisions.
- 41-6.8 Violation—Penalty.

Sec. 41-6.1 Definitions.

“Crime of violence” means any of the following crimes: murder, manslaughter, rape, kidnapping, robbery, burglary, and those certain crimes set forth in HRS Chapters 707 and 711, as amended.

“Shooting gallery” means and includes any place or premises where facilities or devices for target shooting for practice or amusement with any firearm (as defined in HRS Section 134-1) are provided for the use of any person for a fee, pay or compensation of any kind to be paid, directly or indirectly, by such person. (Sec. 13-15.1, R.O. 1978 (1983 Ed.))

Sec. 41-6.2 Permit required—Fee.

(a) It is unlawful for any person to establish, keep, conduct or operate any shooting gallery without a permit, or to assist in the operation of such a shooting gallery.

(b) The fee for each permit shall be \$5.00.

(Sec. 13-15.2, R.O. 1978 (1983 Ed.))

Sec. 41-6.3 Application for permit.

(a) Application for a permit shall be made in writing to the chief of police and shall be signed and verified under oath by the applicant, and accompanied by the permit fee of \$5.00.

(b) The application shall set forth:

(1) The full name, age and address of the applicant and of any persons, other than the applicant, who are to be in charge of and responsible for the operation of the shooting gallery or who are to be employed in connection with such operation.

(2) The occupation of the applicant.

(3) A full and complete description of the place and location of the shooting gallery for which a permit is desired.

(4) The full name and address of the owner of the premises or of the person in control of said premises.

(5) The term for which the applicant desires a permit, that is, whether for one day, several days, a month or a year; provided, that in no case shall the permit be valid for more than one year.

(6) A statement that neither the applicant, nor any agent or employee connected with the shooting gallery has been convicted in this state or elsewhere of having committed or attempted to commit any crime of violence.

(7) The number of firearms and shooting lanes proposed to be used.

(Sec. 13-15.3, R.O. 1978 (1983 Ed.))

Sec. 41-6.4 Qualifications of applicant.

(a) An applicant shall be 20 years of age or over, shall have been a resident of the city continuously for at least one year immediately preceding the date of application and shall not have been convicted in this state or elsewhere of having committed or attempted to commit any crime of violence.

(b) Every corporation, firm, association or club applying for a permit shall first appoint an agent who shall be given full authority and control of the premises and of all matters relating to the shooting gallery. Such authorization shall be evidenced in writing, duly executed. Such agent shall meet the qualifications set forth in subsection (a) of this section, and shall be personally responsible for compliance with all the terms and provisions of this article.

(c) No permit shall be issued to any person who has been convicted more than twice of violating any provision of this article.

(Sec. 13-15.4, R.O. 1978 (1983 Ed.))

Sec. 41-6.5 Conditions of permit.

All permits to operate a shooting gallery shall be subject to all applicable laws and ordinances and to the following conditions which shall be written and placed upon the permit:

(a) The shooting gallery and its immediate vicinity shall be brightly lighted at all times when it is open for business.

(b) No shooting gallery shall be operated on any week day between the hours of two a.m. and eight a.m. nor on Sundays between the hours of two a.m. and 12:00 noon.

(c) No person who is known to have been convicted in this state or elsewhere, of having committed or attempted to commit any crime of violence, shall be permitted to handle any firearm.

(d) No person under the age of 20 years shall be permitted to handle any firearm at the shooting gallery, except under the supervision of a responsible adult.

(e) No person under the influence of intoxicating liquor shall be permitted to handle any firearm or to be or remain upon the premises of any shooting gallery and no intoxicating liquor shall be consumed in or around the premises of any shooting gallery.

(f) It is unlawful to employ in connection with the operation of any shooting gallery any person who is under the age of 20 years or any person who has been convicted in this state or elsewhere of having committed or attempted to commit any crime of violence.

(g) All firearms used for, in or at the shooting gallery shall be securely chained or otherwise attached to the firing line counter, in such a manner as to prevent their removal by unauthorized persons or being pointed or aimed in any direction other than the direction of the target area.

(h) No firearm shall be used, kept or discharged within the premises of the shooting gallery, which is larger than a .22 caliber rifle, and no ammunition larger than .22 caliber long rifle rim fire cartridge shall be used.

(i) The permit holder, or the permit holder's agent who is duly registered with the chief of police, shall be present within the premises of the shooting gallery at all times that it is open for business.

- (j) No person other than the permit holder, or the permit holder's agent, who is duly registered with the chief of police, shall be permitted entry into the range area or the area situated between the firing line and targets, when any firing is in progress.
- (k) The room, place or enclosure wherein firing is to take place shall not be used for any other purpose whatsoever, when any firing is in progress.
- (l) Reasonable precautions, as required or approved by the chief of police, shall be taken to prevent any injury to the public.
- (m) The chief of police and any of the health, fire and law enforcement officers or authorities of the city, the State of Hawaii, or of the United States, may at any time enter the premises of a shooting gallery for the purpose of inspecting the same and the conditions therein.
(Sec. 13-15.5, R.O. 1978 (1983 Ed.))

Sec. 41-6.6 Display of permit.

Any permit issued hereunder shall be displayed in a conspicuous place upon the premises for which said permit had been issued. (Sec. 13-15.6, R.O. 1978 (1983 Ed.))

Sec. 41-6.7 Permits—General provisions.

- (a) In the event that a permit holder discontinues the operation of a shooting gallery, notice of such discontinuance shall forthwith be given in writing to the chief of police and the permit surrendered to the chief of police.
- (b) No permit shall be transferable.
- (c) Nothing contained in this article shall be construed to lessen or abrogate any requirements prescribed by any other ordinance or statute.
(Sec. 13-15.7, R.O. 1978 (1983 Ed.))

Sec. 41-6.8 Violation—Penalty.

- (a) Any person who falsely swears to any application for a permit under this article, or who knowingly violates or assists in the violation of any of the conditions prescribed in said permit, or who violates any of the provisions of this article, shall upon conviction be punished by a fine not exceeding \$1,000.00 or by imprisonment for a term not exceeding one year, or by both.
- (b) In addition thereto, upon the conviction hereunder of any owner or operator of any shooting gallery or of any agent or employee thereof, the court may suspend or cancel the permit for the shooting gallery and may prescribe any period not more than one year during which the holder of such permit shall be prohibited from applying for a new permit hereunder. The penalties herein prescribed shall not be construed in any way to prevent the closing of any shooting gallery as a public nuisance. (Sec. 13-15.8, R.O. 1978 (1983 Ed.))

Article 7. Operation of Certain Amusement Facilities

Sections:

- 41-7.1 Skating rink—Certain hours of operation prohibited—Penalty.

Sec. 41-7.1 Skating rink—Certain hours of operation prohibited—Penalty.

- (a) No skating rink shall do business or be operated on any day between the hours of 12:00 midnight and eight a.m.
- (b) Any person violating this section shall upon conviction be punished by a fine not exceeding \$1,000.00.
(Sec. 13-18.1, R.O. 1978 (1983 Ed.))

Article 8. Air Guns

Sections:

- 41-8.1 Definitions.
- 41-8.2 Restrictions on sale, rental, gift or other transfer.
- 41-8.3 Restrictions on use.
- 41-8.4 Exceptions.
- 41-8.5 Seizure, forfeiture and disposal.
- 41-8.6 Violation—Penalty.

Sec. 41-8.1 Definitions.

“Air gun” means any gun, rifle or pistol, by whatever name known, which is designed to expel a pellet or BB shot by the action of compressed air or gas, or by the action of a spring or elastic but does not include any firearm.

“Dealer” means any person engaged in the business of selling or renting air guns. (Sec. 13-19.1, R.O. 1978 (1983 Ed.))

Sec. 41-8.2 Restrictions on sale, rental, gift or other transfer.

(a) It is unlawful for any dealer to sell, lend, rent, give or otherwise transfer an air gun to any person under the age of 18 years where the dealer knows or has reasonable cause to believe the person to be under 18 years of age or where the dealer has failed to make reasonable inquiry relative to the age of such person and such person is under 18 years of age.

(b) It is unlawful for any person to sell, lend, rent, give or otherwise transfer any air gun to any person under 18 years of age, except where the relationship of parent and child, guardian and ward, or adult instructor and pupil exists between such person and the person under 18 years of age.

(Sec. 13-19.2, R.O. 1978 (1983 Ed.))

Sec. 41-8.3 Restrictions on use.

(a) It is unlawful for any person to carry or display an air gun on any street, alley, public road or on any public land, unless the air gun is unloaded and in a suitable case or securely wrapped.

(b) It is unlawful for any person to discharge any air gun from or across any street, sidewalk, alley or public land, or any public place except on a properly constructed target range.

(c) It is unlawful for any person to discharge any air gun on any private parcel of land or residence in such a manner that the pellet or BB shot may reasonably be expected to traverse any ground or space outside the limits of such parcel of land or residence or in such a manner that persons or property may be endangered; provided, that nothing in this article shall be deemed to prevent any person who has obtained a hunting license pursuant to HRS Chapter 183D from engaging in hunting in accordance with law.

(d) It is unlawful for any person to discharge any air gun in such a manner or under such circumstances that persons or property may be endangered.

(Sec. 13-19.3, R.O. 1978 (1983 Ed.); Am. Ord. 96-58, 03-23)

Sec. 41-8.4 Exceptions.

Notwithstanding any provision of this article to the contrary, it shall be lawful for any person to possess an air gun if it is:

(a) Kept within such person’s domicile.

(b) Used by a person under 18 years of age, who is a duly enrolled member of any club, team or society organized for education or training purposes and maintaining as a part of its facilities or having written permission to use an indoor or outdoor target range, when the air gun is used at such target range under the supervision, guidance and instruction of a responsible adult.

(c) Used by a person 18 years of age or older at a properly constructed target range.

(d) Used in or on any private parcel of land or residence under circumstances in which the air gun can be fired, discharged or operated in such a manner as not to endanger persons or property and in such manner as to prevent the pellet or BB shot from traversing any grounds or space outside the limits of such parcel of land or residence.

(e) Used in hunting or going to or from the place of hunting in accordance with law by a person who has obtained a hunting license pursuant to HRS Chapter 183D or who, if such person is under 18 years of age, has obtained such a hunting license and is accompanied by an adult who has obtained such hunting license.

(f) Used by a person involved in a living history presentation or other activity for historical interpretation or educational purposes, or by a person participating in a parade if such activity or parade participant is associated with an established historical organization, museum, military preservation organization, or other group with a mission to educate the public at various events through the use of historical artifacts, clothing, vehicles, aircraft, maritime vessels, and firearms or replicas thereof.

(Sec. 13-19.4, R.O. 1978 (1983 Ed.); Am. Ord. 96-58, 03-23, 03-35)

Sec. 41-8.5 Seizure, forfeiture and disposal.

Any police officer who arrests any person for possessing, using, lending, renting, giving or transferring an air gun in violation of any provisions of this article shall take custody of such air gun. Upon conviction of such person the air gun so seized shall be forfeited to the city. Any air gun so forfeited shall remain in the custody of the police department for one year and thereafter destroyed; provided, that such air gun shall be retained for subsequent proceedings, both civil or criminal, and until any such action is concluded, if any person desiring the use of such forfeited air gun as evidence files with the chief of police a written notice of an intention to so use the air gun before the destruction date herein provided. (Sec. 13-19.5, R.O. 1978 (1983 Ed.))

Sec. 41-8.6 Violation—Penalty.

Any person violating any provision of this article shall, upon conviction, be punished by a fine not exceeding \$500.00 or imprisonment for a period not exceeding one year, or both. (Sec. 13-19.6, R.O. 1978 (1983 Ed.))

(Article 9. Palmistry. Repealed by Ord. 13-6)**Article 9. Reserved****Article 10. Disposal of Weeds, Garbage, Trash and Waste from Property****Sections:**

- 41-10.1 Declaration of legislative intent.**
- 41-10.2 Definitions.**
- 41-10.3 Regulations for premises.**
- 41-10.4 Clearing of weeds, garbage, trash and waste from property.**
- 41-10.5 Administrative enforcement.**

Sec. 41-10.1 Declaration of legislative intent.

The following is the declaration of legislative intent of the council:

- (a) The provisions which are set forth hereinafter are authorized pursuant to the provisions of HRS Section 46-1.5.
- (b) Any weeds, garbage, trash or waste which are more specifically defined hereinafter are declared to be public nuisances to the health, safety and welfare of the residents of the city and, therefore, cutting and removal thereof shall be accomplished pursuant to the provisions set forth hereinafter.
- (c) The provisions set forth hereinafter are intended to remove and control such weeds, garbage, trash and waste and to provide the necessary power and authority to an administrative agency of the city to effectuate said purpose.

(Sec. 13-29.1, R.O. 1978 (1983 Ed.); Am. Ord. 96-58)

Sec. 41-10.2 Definitions.

“Building superintendent” means the director and building superintendent of the building department of the city.

“Cut” means to clear, trim, shape, separate, divide, sever, shorten, reduce, curtail, slash or to otherwise control and dispose of weeds on property; provided, however, that weeds may be disposed of by incineration in accordance with the Fire Code.

“Garbage” means all animal and vegetable matter, such as waste material and refuse from kitchens, residences, grocery stores, butcher shops, restaurants, cafes, drugstores, hotels, and rooming and boarding houses, and other deleterious substances.

“Owner” means the fee simple owner, lessee of record, administrator, administratrix, executor, executrix, receiver, trustee, property management agent or any other individual who has control or possession of privately owned real property.

“Property” means real property and applies to:

- (1) Any privately or government owned vacant lot abutting either side of a publicly or privately owned street open to the public; provided that this article shall not apply to real property zoned as agriculture, country, and preservation under Chapter 21; and
- (2) Privately owned vacant lots of 15,000 square feet or less that abut a residential lot or residential lots.

“Remove” means to move, displace, shift, take away, haul or otherwise transfer garbage, trash and waste from property; provided, however, that trash may be disposed of by incineration in accordance with the Fire Code.

“Trash” means rubbish such as feathers, ashes, tin cans, paper, rags, boxes and glass.

“Vacant” means unimproved and unoccupied.

“Waste” means any object, substance or thing, of whatever kind of character, which, for any reason, may be or may have been thrown away, discarded, or abandoned such as, but not limiting the generality of the foregoing:

- (1) Refrigerators, ranges, furniture, fixtures and other similar household items;
- (2) Vehicles, machinery, farm equipment, construction equipment, scrap iron of all kinds or any other similar item;
- (3) Debris from demolished structures or buildings;

- (4) Bulky wastes discharged by mercantile, industrial and other establishments; and
- (5) All garbage and trash other than defined above.

“Weeds” means vegetation of such nature, which has reached such growth, and is present in such quantity, that it constitutes a substantial risk of one or more of the following hazards:

- (1) The vegetation, when dry, is or will be a fire hazard.
- (2) The vegetation is, or is naturally suited as a sheltering or breeding place for rats, mice, mosquitoes or other vermin or noxious insects.
- (3) The vegetation overgrows or spreads upon or over any road, alley, path, or sidewalk owned or open to the public to such extent as to obstruct, impede or interfere with the safe or convenient use or maintenance thereof.
- (4) The vegetation has grown or spread, or has fallen or may fall into any privately owned or controlled stream, ditch, sewer, canal or other waterway and obstruct or narrow the channel thereof or impede the flow of water therein.

(Sec. 13-29.2, R.O. 1978 (1983 Ed.); Am. Ord. 91-60, 96-58, 07-10, 18-7)

Sec. 41-10.3 Regulations for premises.

The owner of vacant property shall at all times maintain the premises free of weeds, garbage, trash and waste. (Sec. 13-29.3, R.O. 1978 (1983 Ed.))

Sec. 41-10.4 Clearing of weeds, garbage, trash and waste from property.

- (a) Notice to Remove. The building superintendent is authorized and empowered to notify the owner of property within the city to properly cut and remove weeds, garbage, trash and waste located on such owner’s property. Such notice shall be served upon the owner of the property by certified mail, addressed to said owner at the owner’s last known address, by publication in a daily or weekly publication in the city pursuant to HRS Section 1 28.5, or by posting a copy of the notice upon the property.
- (b) Period During Which Owner Shall Commence Cutting and Removing Weeds, Garbage, Trash or Waste. The owner of such property shall be given 30 calendar days within which to commence the cutting and removal of said weeds, garbage, trash or waste as described in the notice.
- (c) Form of Notice. The notice shall describe the work to be done and shall state that if the work is not commenced within 30 calendar days after notice is given and diligently prosecuted to completion without interruption, the building superintendent may cut and remove the weeds, garbage, trash or waste and the cost thereof shall be a lien on the property.
- (d) Action upon Noncompliance. Upon the failure, neglect or refusal of any owner so notified to commence cutting and removing the weeds, garbage, trash or waste within 30 days after notice has been given as hereinbefore provided, or within 30 days after the date of mailing such notice in the event the post office department is unable to make delivery thereof; provided, that same was properly addressed to the last known address, of such owner, the building superintendent is authorized and empowered to pay for cutting and removing such weeds, garbage, trash or waste out of city funds or to order its disposal by city employees. The building superintendent and the building superintendent’s authorized representatives, including any contractor with whom the building superintendent contracts hereunder, and assistants, employees, or agents of such contractor, are authorized to enter upon said property for the purposes of cutting and removing the weeds, garbage, trash or waste described in the notice. Before the building superintendent or the building superintendent’s authorized representative or contractor arrives, any property owner may cut and remove the weeds, garbage, trash or waste at the property owner’s own expense.
- (e) Charge to Owner. When the city has cut and removed such weeds, garbage, trash or waste or has paid for their removal, the cost thereof, including overhead costs, plus accrued interest at the rate of seven percent per annum shall be charged to the owner of such property and the owner shall be billed therefor by mail. The bill shall apprise the owner that failure to pay the bill will result in a lien. Interest at the rate of seven percent per annum shall accrue from the 31st calendar day after the bill has been mailed to the owner for payment in the event the same has not been paid prior thereto.

- (f) Statement of Building Superintendent. Where the full amount due the city is not paid by such owner within 30 calendar days after the bill has been mailed for payment, the building superintendent shall cause to be recorded with the city director of finance a statement showing the cost and expense incurred for the work, the date the work was done and the location of the property on which said work was done and file the same with the director of finance who shall refer the collection thereof to the corporation counsel.
- (g) Mechanic's and Materialman's Lien Procedure. Any work done by the city hereunder is deemed to be done pursuant to quasi contract or constructive contract between the city and the owner. Based on the foregoing contractual relationship, if the owner fails to pay the amount duly noted on the statement filed by the building superintendent, the corporation counsel may proceed to file a mechanic's and materialman's lien pursuant to the provisions of Part II of HRS Chapter 507, or any other appropriate lien procedures.
(Sec. 13-29.4, R.O. 1978 (1983 Ed.); Am. Ord. 13-9, 15-21)

Sec. 41-10.5 Administrative enforcement.

In lieu of or in addition to enforcement pursuant to Section 41-10.4(e), if the building superintendent determines that any person, firm or corporation is not complying with the notice, the building superintendent may have the party responsible served, by mail or delivery, with an order pursuant to this section.

- (a) Contents of Order.
 - (1) The order may require the party responsible for the violation to do any or all of the following:
 - (A) Correct the violation within the time specified in the order;
 - (B) Pay a civil fine not to exceed \$5,000.00 in the manner, at the place and before the date specified in the order, after an opportunity for a hearing before the building board of appeals as provided for in subsection (b) of this section;
 - (C) Pay a civil fine not to exceed \$5,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order, after an opportunity for a hearing before the building board of appeals as provided for in subsection (b) of this section;
 - (2) The order shall advise the party responsible for the violation that the order shall become final 30 calendar days after the date of its delivery. The order shall also advise that the building superintendent's action may be appealed to the building board of appeals.
- (b) Service of Notice of Order. A notice of order must be served upon responsible persons either personally or by certified mail. However, if the whereabouts of such persons are unknown and the same cannot be ascertained by the building superintendent in the exercise of reasonable diligence and the building superintendent provides an affidavit to that effect, then a notice of order may be served by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.
- (c) Effect of Order—Right to Appeal. The provisions of the order issued by the building superintendent under this section shall become final 30 calendar days after the date of the delivery of the order. The party responsible for the violation may appeal the order to the building board of appeals as provided in Chapter 16. The appeal must be received in writing on or before the date the order becomes final.
- (d) Judicial Enforcement of Order. The building superintendent may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the building superintendent need only show that the notices of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

(Added by Ord. 90-92; Am. Ord. 13-9, 15-21)

Article 11. Control of and Evacuation from Disaster Areas During Potential Disasters

Sections:

- 41-11.1 Legislative findings.**
- 41-11.2 Definitions.**
- 41-11.3 Prohibitions.**
- 41-11.4 Declaration by mayor.**
- 41-11.5 Violation—Penalty.**

Sec. 41-11.1 Legislative findings.

The council finds that:

- (a) Because of the possibility of disaster of great destructiveness resulting from flood, tidal waves, storm waves, fire or other natural causes or from enemy attack, sabotage or other hostile enemy action; and
 - (b) In order to ensure the orderly evacuation of persons and property; and
 - (c) To protect the public peace, health, safety and welfare; and
 - (d) To preserve the lives and property of the people of the City and County of Honolulu;
- it is in the public interest to make unlawful certain activities as provided herein.
(Sec. 13-30.1, R.O. 1978 (1983 Ed.))

Sec. 41-11.2 Definitions.

The meaning of terms used in this article shall be as follows:

“Authorized personnel” means any:

- (1) City or state employee assigned to disaster duty during an impending disaster or disasters;
- (2) National Guard members;
- (3) United States Armed Forces personnel; and
- (4) Civil Defense Agency personnel or volunteers.

“Disaster” means any situation, usually catastrophic in nature, where numbers of persons are plunged into helplessness and suffering and, as a result, may be in need of food, clothing, shelter, medical care or other necessities of life, and the governor of the state or mayor of the City and County of Honolulu has declared a state of disaster or emergency.

“Disaster area” means the area in which a disaster occurs.

“Highway” means any primary or secondary road, street, alley, pedestrian walkway and trail.

“Impending disaster” means any situation where a catastrophe threatens an inhabited area and the Civil Defense Agency has issued a warning that the inhabitants thereof should evacuate the threatened area.

“Impending disaster area” means the area which is threatened by a catastrophe such as a flood, tidal waves, storm waves, fire or other natural causes or from enemy attack, sabotage or other hostile enemy action.
(Sec. 13-30.2, R.O. 1978 (1983 Ed.))

Sec. 41-11.3 Prohibitions.

- (a) No person shall commit the following acts during an impending disaster or disasters:
 - (1) Loiter, loaf or idle upon any public or private highway, place, sidewalk or beach, on foot or on any vehicle, in or close to an impending disaster or disaster area.
 - (2) Disobey any direction or command of any authorized person directing traffic.
 - (3) Refuse or fail to evacuate any area, public or private, upon order of any authorized person, which action impedes or tends to impede the effectiveness and orderly handling of the evacuation of persons from an impending disaster area.
 - (4) Refuse or fail to leave any area public or private upon order of any authorized person, which action impedes or tends to impede the effective and orderly handling of the disaster; provided, however, nothing herein shall be construed to prevent any authorized person from lawfully preserving, protecting or salvaging any property, real or personal, or to prevent any other authorized person from performing any other lawful duty within a disaster area after the danger to life and property from natural causes or enemy action has passed.

- (b) For the purposes of this section, the administrator of the Oahu Civil Defense Agency shall determine when the danger to life and property has subsided.
(Sec. 13-30.3, R.O. 1978 (1983 Ed.))

Sec. 41-11.4 Declaration by mayor.

The power to declare a state of disaster or emergency is conferred on the mayor of the City and County of Honolulu.

(Sec. 13-30.4, R.O. 1978 (1983 Ed.))

Sec. 41-11.5 Violation—Penalty.

Any person violating the provisions of this article shall be subject to a fine not to exceed \$500.00 or imprisonment in the city and county jail for a term not to exceed 30 days, or both.

(Sec. 13-30.5, R.O. 1978 (1983 Ed.))

Article 12. Bicycles

Sections:

- 41-12.1 Definitions.**
- 41-12.2 Retail bicycle dealers—Records required.**
- 41-12.3 Proof of ownership.**
- 41-12.4 Certificates of registration.**
- 41-12.5 Transfer of registration.**
- 41-12.6 Evidence of ownership.**
- 41-12.7 Serial numbers—Defacing prohibited.**
- 41-12.8 Applicability.**
- 41-12.9 Violation—Penalty.**

Sec. 41-12.1 Definitions.

As used in this article, unless the context clearly requires otherwise:

“Child” means a minor under the age of 18 years.

“Director” means the director of finance and includes the director of finance’s authorized deputies and subordinates.

“New bicycle” means a new bicycle or a bicycle previously unregistered under this article which is sold by a retail dealer.

“Parent” means either one of the parents of the child, or any legal guardian.

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“Retail dealer” means any person who sells bicycles in the regular course of business primarily for the use and enjoyment of the purchaser and not for resale.

“Transferee” means the person to whom and in whose name a bicycle will be transferred including retail dealers or in the case of a child, the child’s parent. (Sec. 13-31.1, R.O. 1978 (1983 Ed.))

Sec. 41-12.2 Retail bicycle dealers—Records required.

All retail dealers shall keep a record for four years after the sale of a new bicycle of the name of the purchaser, and the serial number, description and make of the bicycle sold to the purchaser. This record may be inspected by the chief of police or the chief of police’s representative during reasonable business hours. (Sec. 13-31.2, R.O. 1978 (1983 Ed.))

Sec. 41-12.3 Proof of ownership.

Upon initial registration of a new bicycle with the city by an owner within five days of the purchase thereof and as required by HRS Section 249-14, the director shall require the owner to furnish proof of ownership in the form or nature of a bill of sale executed by a retail dealer, in the name of the purchaser. The bill of sale shall include the name and address of the retail dealer, a written statement executed by the purchaser that the purchaser has examined the bicycle to verify the correct serial number and description as written in the bill of sale. If the purchaser is a child, the bill of sale shall be issued in the name of the parent. The director may verify the bill of sale presented at the registration of bicycle from the records of the retail dealer. (Sec. 13-31.3, R.O. 1978 (1983 Ed.))

Sec. 41-12.4 Certificates of registration.

(a) Upon the presentation of satisfactory evidence of proof of ownership as required by Section 41-12.3, the director shall assign to such bicycle a number plate and issue to the owner whose name appears on the bill of sale, a certificate of registration. In the event of loss, mutilation or destruction of any certificates of registration, the owner of the registered bicycle shall file such statement of facts and provide such other information as the director shall require and unless the director shall otherwise direct, a duplicate certificate of registration shall be issued.

(b) The certificate of registration shall contain upon the face thereof, the date of issue, the number plate assigned to the bicycle, the name and address of the owner, the serial number, description, make of the bicycle and such other information as may be deemed necessary by the director. The reverse side of the certificate of registration shall contain a form for notice to the director of a transfer of registration by the owner.

(Sec. 13-31.4, R.O. 1978 (1983 Ed.))

Sec. 41-12.5 Transfer of registration.

(a) Upon a transfer of the registration of a bicycle registered under this article, the person named on the face of the registration and the transferee shall endorse the certificate of registration to the intended transferee, or the transferee’s parent if such transferee is a child.

(b) Within 20 days thereafter, the transferee shall forward the certificate of registration so endorsed to the director. Upon receipt of the certificate properly endorsed, the director shall examine and determine the genuineness and regularity of the transfer of registration of the bicycle, and the director shall prevent the transfer of registration of a bicycle by any person not entitled thereto. Upon being satisfied as to the regularity of the application for transfer of registration the director shall reregister the bicycle in the name of the transferee and shall issue to the transferee a new certificate of registration. No bicycle registration under the provisions of this article shall be transferred except as provided in this section.

(Sec. 13-31.5, R.O. 1978 (1983 Ed.))

Sec. 41-12.6 Evidence of ownership.

Under no circumstances shall any certificate of registration issued under this part be deemed to be a guaranty as to the validity of the title to the bicycle by the director, nor shall the certificate of registration be used as collateral for a loan or the recordation of liens. (Sec. 13-31.6, R.O. 1978 (1983 Ed.))

Sec. 41-12.7 Serial numbers—Defacing prohibited.

(a) No person shall wilfully deface, destroy or alter the serial number, a component part number, or any other identification mark of any bicycle so placed or stamped on a bicycle by the manufacturer for the purpose of identifying the bicycle or its component parts.

(b) This section does not prohibit the restoration by an owner of an original mark or number, when the restoration is authorized in writing by the director.

(Sec. 13-31.7, R.O. 1978 (1983 Ed.))

Sec. 41-12.8 Applicability.

The provisions of this article shall not apply to any new bicycle sold prior to the effective date of this article. (Sec. 13-31.8, R.O. 1978 (1983 Ed.))

Sec. 41-12.9 Violation—Penalty.

Any person violating the provisions of Sections 41-12.2 and 41-12.7 shall be fined not more than \$500.00. (Sec. 13-31.9, R.O. 1978 (1983 Ed.); Am. Ord. 95-20)

Article 13. Protective Regulations for Exceptional Trees

Sections:

- 41-13.1 Declaration of legislative intent.
- 41-13.2 Definition.
- 41-13.3 Arborist advisory committee.
- 41-13.4 Powers and duties.
- 41-13.5 Procedures.
- 41-13.6 Enforcing authority.
- 41-13.7 Register of exceptional trees.
- 41-13.8 Regulations.
- 41-13.9 Emergency situation.
- 41-13.10 Violation—Penalty—Injunctive enforcement.
- 41-13.11 Severability.
- 41-13.12 Appeals.

Sec. 41-13.1 Declaration of legislative intent.

(a) The council of the City and County of Honolulu desires to provide for better environmental control in order to improve the quality of life of its citizens by enacting protective regulations to safeguard exceptional trees within the City and County of Honolulu. The council finds that not only are trees of value for their beauty, but that they perform an important ecological function in that they prevent soil erosion, purify the air, as well as retard flooding. The council also finds that inasmuch as trees contribute to the beauty of the island, they are an important element in achieving the objectives of the new general plan “to protect and preserve the natural environment of Oahu” and “to maintain the viability of Oahu’s resort industry.”

(b) While the council recognizes the limitations inherent in the enforcement of this article on federal and state property, exceptional trees located on such property are included herein, as a statement of this council’s firm resolve to protect those unique assets to our environment, wherever they might be located on Oahu. Further, it is hoped that this statement of resolve will encourage these federal and state officials entrusted with the care of designated exceptional trees, to take appropriate steps for their protection.

(c) In the belief that protective regulations to safeguard exceptional trees will promote the health, safety and general welfare of the citizens of the City and County of Honolulu, the city council enacts this article as a means of preserving the environmental character of the city and county within the provisions of Act 105, Session Laws of Hawaii, 1975. The terms of this article shall be liberally construed to effectuate the purpose stated herein. (Sec. 13-36.1, R.O. 1978 (1983 Ed.))

Sec. 41-13.2 Definition.

“Exceptional trees,” for the purposes of this article, means a tree or grove of trees with historic or cultural value, or which by reason of its age, rarity, location, size, esthetic quality or endemic status has been designated by the city council as worthy of preservation.
(Sec. 13-36.2, R.O. 1978 (1983 Ed.))

Sec. 41-13.3 Arborist advisory committee.

There shall be an arborist advisory committee consisting of nine members who shall be appointed by the mayor. The committee shall include the director of the department of planning and permitting, or the director’s designee. At least one member shall be actively employed in the practice of landscape architecture, at least one member shall be actively employed as a certified arborist, and six other members shall be selected on the basis of their active participation in programs of community beautification, or research or organization in the ecological sciences, including ethnobotany or Hawaiiana. The committee shall be attached to the department of parks and recreation for administrative purposes and the director shall cause employees of the director’s office to furnish technical, administrative or clerical services as may be needed by the committee.
(Sec. 13-36.3, R.O. 1978 (1983 Ed.); Am. Ord. 00-54)

Sec. 41-13.4 Powers and duties.

The arborist advisory committee shall have the following powers and duties:

- (a) To research, prepare and recommend to the city council exceptional trees to be protected by city ordinance or regulation.
- (b) To advise property owners relative to the preservation and enhancement of exceptional trees by providing educational resources and information to property owners about proper tree care and maintenance.
- (c) To recommend to the city council appropriate protective ordinances, regulations and procedures.
- (d) To review all actions deemed by the city council to endanger exceptional trees.

(Sec. 13-36.4, R.O. 1978 (1983 Ed.); Am. Ord. 10-23)

Sec. 41-13.5 Procedures.

- (a) Any citizen or citizen group may petition the arborist advisory committee to examine a particular tree or grove of trees for the purpose of having it recommended to the city council for designation as an exceptional tree.
- (b) In the event an exceptional tree is found to no longer meet the exceptional tree criteria, the council, upon recommendation from the arborist advisory committee, may delist such tree from the register.
- (c) Upon designation by the council of an exceptional tree, the city clerk shall notify the property owner and/or the occupant of the property by registered mail that such a designation has been made.

(Sec. 13-36.5, R.O. 1978 (1983 Ed.); Am. Ord. 10-23)

Sec. 41-13.6 Enforcing authority.

The department of parks and recreation shall be charged with the enforcement of this article and shall be clothed with police power to do all acts necessary to ensure that the provisions of this article are not violated including, but not limited to, the issuance of citations for the violation of any provisions of this article. The provisions of this article shall not be superseded by any permit issued by any county agency under any other ordinance.

(Sec. 13-36.6, R.O. 1978 (1983 Ed.); Am. Ord. 96-58)

Sec. 41-13.7 Register of exceptional trees.

The trees listed in this section are designated “exceptional trees” of the City and County of Honolulu.

- (a) The following trees begin with the letters “a” through “b”:

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Acrocarpus fraxinifolius, Pink Cedar Tree	Schofield Barracks, Ulrich Street, west of Building S2107	N/A

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Adansonia digitata, Baobab Tree	Queen's Medical Center, 1301 Punchbowl Street*	2-1-035:003
	Grove of 11 trees – Ala Moana Regional Park	2-3-037:001
	Foster Botanical Garden, 180 North Vineyard Boulevard	1-7-007:002
	University of Hawaii at Manoa, adjacent to the Art Building, 2444 Dole Street	2-8-023:003
Agathis robusta, Queensland Kauri Tree	Harold L. Lyon Arboretum, 3860 Manoa Road	2-9-055:006
Albizia guachapele, Guachapele Trees	3 trees – Wheeler Army Airfield, on the median strip of Wright Avenue between Elleman Road and Foote Avenue	N/A
Albizia niopoides	Schofield Barracks, Sargent Road, between Buildings T-695 and 699A	N/A
Albizia procera, Albizia	4 trees – Wheeler Army Airfield, Wright Avenue, two trees north of building at 147 Langley Loop, one tree north of building at 766 Santos Dumont, one tree in front of quarters at 1078 Wright Avenue	N/A
Albizia saman, Monkeypod Tree	2 trees – Waimea Valley, at the Visitor Center	6-1-002:002
	420 Wyllie Street	1-8-006:007
	Central Union Church – courtyard Atherton Chapel, 1660 South Beretania Street	2-8-011:028
	Both sides of Paki Avenue from Kapahulu to Monsarrat and 4 trees at Waikiki Fire Station	3-1-043:002
	2 trees – Moanalua Gardens, 2850 Moanalua Road	1-1-009:004
	1070 Aalapapa Drive, Lanikai	4-3-006:102
	11 trees – along Koa Kahiku Street, Windward City Shopping Center	4-5-060:061
	Wheeler Army Airfield, 258 Haley Avenue, Apartment 102	N/A
	5 trees – along perimeter of Windward Shopping Center on Aumoku Street	4-5-060:061
	3 Trees – left and right of driveway entrance of Women's Community Corrections Center, Kailua	4-2-003:004
	16 Trees – 52 Robinson Lane	1-8-003:002; 1-8-003:003; 1-8-003:005
	"Hitachi Tree," Moanalua Gardens, 2850 Moanalua Road, Honolulu, Hawaii 96819	1-1-009:004
	3 trees – Cooke Estate, 2859 Manoa Road	2-9-019:035
2 trees – Cooke Estate, 2829 Manoa Road	2-9-019:025	

* "Champion Trees of Hawaii," in *American Forests*, May 1974.

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Araucaria bidwillii, Bunya-bunya Tree	Castle Ranch, 1385 Maunawili Road	4-2-009:001
Araucaria cunninghamii, Hoop-Pine Tree	Harold L. Lyon Arboretum, 3860 Manoa Road	2-9-055:006
Araucaria heterophylla, Norfolk Island Pine Tree	Castle Ranch, 1385 Maunawili Road	4-2-009:001
Araucaria spp., Norfolk Island Pines	33 trees – Schofield Barracks, both sides of General Loop	N/A
Artocarpus altilis, Breadfruit Tree	Castle Ranch, 1385 Maunawili Road	4-2-009:001
Attalea cohune, Mexican Cohune Nut Palms	Grove of 8 palms – 3282 Paty Drive	2-9-041:068
Barringtonia asiatica, Hutu Tree	University of Hawaii at Manoa, mauka side of Bilger Hall at McCarthy Mall area	2-8-023:003
Bertholletia excelsa, Brazil Nut Tree	2616 Pali Highway	1-8-008:001
Bucida buceras, Geometry Tree	Ala Moana Regional Park	2-3-037:001
	Schofield Barracks, Sargent Road, north of Building T-695	N/A

(b) The following trees begin with the letters “c” through “e”:

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Calophyllum inophyllum, Kamani Trees	2 trees – Kualoa Regional Park – corner near fishpond, makai of Kamehameha Highway	4-9-004:001
	25 trees – Wheeler Army Airfield, both sides of Haley Avenue between Elleman and Chanute Roads	N/A
	52 Robinson Lane	1-8-003:002
Canarium vulgare, Pili Nut Tree	Foster Botanical Garden, 1438 Nuuanu Avenue*	1-7-008:002
	Northwest corner of J.R. Judd property, Hakipuu, 49-074-C Kamehameha Highway	4-9-001:005
	Washington Place	2-1-018:001
Capparis mollicella	Schofield Barracks, located on the south side of Building 2105, Ulrich Street	N/A
Cassia roxburghii, Red Cassia Tree	45-647 Anoi Road	4-5-081:015
Cassia x nealiae, ‘Wilhelmina Tenny’/Rainbow Shower Tree	Foster Botanical Garden, 180 North Vineyard Boulevard	1-7-007:002

* “Champion Trees of Hawaii,” in *American Forests*, May 1974.

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Casuarina equisetifolia, Ironwood Trees	Along Kalakaua Avenue from Kapahulu Avenue to Poni Moi Road	3-1-043:001
	Grove of double row – parallel to the Kapiolani Park Bandstand, at Monsarrat Avenue’s Waikiki Shell parking lot makai entrance	3-1-043:001
	52 Robinson Lane	1-8-003:002
Cavanillesia plantanifolia, Quipo Tree	Foster Botanical Garden, 1438 Nuuanu Avenue*	1-7-008:002
Ceiba pentandra, Kapok Tree	Grounds of State Department of Agriculture, 1428 South King Street	2-4-005:018
	2 trees – Foster Botanical Garden, 1438 Nuuanu Avenue	1-7-008:002
Couroupita guianensis, Cannonball Tree	Foster Botanical Garden, 1438 Nuuanu Avenue	1-7-008:002
	University of Hawaii/Manoa Campus, next to parking lot, makai side of Sinclair Library	2-8-023:003
Cyrtostachys renda, Sealing Wax Palm	Harold L. Lyon Arboretum	2-9-055:006
Elaeodendron orientale, False Olive Tree	Foster Botanical Garden, 1438 Nuuanu Avenue	1-7-008:002
Enterolobium cyclocarpum, Earpod Tree	Board of Water Supply – Makiki Pumping Station	2-5-020:001
	Waiialua Library, 67-068 Kealohanui Street	6-7-016:002
	2020 Kamehameha Avenue	2-9-007:015
	23 trees – Schofield Barracks, north side of Leilehua Avenue, from Baldwin Road to Morris Road	N/A
	Schofield Barracks, Bragg Street, 100 feet from Ayres Avenue intersection	N/A
	2 trees – 2823 Oahu Avenue	2-9-014:069
Erythrina sandwicensis, Wiliwili Trees	Grove of 57 trees – Koko Crater Botanical Garden	3-9-012:001
	Grove of 18 trees – Waimea Valley	6-1-001:002
Eucalyptus camaldulensis, River Red Gum Trees	56 trees – Schofield Barracks, south side of Kolekole Avenue, extending from Fournier Avenue to Hewitt Street	N/A
Eucalyptus deglupta, Mindanao Gum Tree	Wahiawa Botanical Garden, 1396 California Avenue*	7-4-017:001
Eucalyptus robusta, Swamp-Mahogany Trees	Schofield Barracks, row of 110 trees along Wilikina Drive in the Mendonca Park Family Housing area	N/A

* “Champion Trees of Hawaii,” in *American Forests*, May 1974.

(c) The following trees begin with the letter “F”:

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Ficus spp., Banyan Trees	45 trees that comprise 4 groves and 6 single trees at Ala Moana Regional Park; 1 Ficus religiosa near the McCoy Pavilion roundabout, 4 Ficus spp. within McCoy Pavilion Courtyard, and 1 large Ficus benghalensis near the Ewa lagoon	2-3-037:001
	Two rows of Ficus benjamina trees along the Ewa side of the Ala Wai Canal and a single row of Ficus microcarpa trees on the Waikiki side of the Ala Wai Canal, all three rows running between Kalakaua Avenue and Ala Moana Boulevard	N/A
	2616 Pali Highway	1-8-008:001
Ficus sp., Fig Tree	Washington Place, 320 South Beretania Street, front lawn Diamond Head side	2-1-018:001
Ficus benghalensis, Indian Banyan Tree	Honolulu Zoo, 151 Kapahulu Avenue	3-1-043:001
	Makai tree – in front of Honolulu Zoo entrance; corner of Kalakaua Avenue and Kapahulu Avenue	3-1-043:001
	Mauka tree – in front of Honolulu Zoo entrance; corner of Kalakaua Avenue and Kapahulu Avenue	3-1-043:001
	Directly across the street from the Zoo entrance, makai side of Kalakaua Avenue	3-1-043:001
	Ewa side of Queen’s Surf Beach Center, makai of Kalakaua Avenue	3-1-030:003
	Ewa side of Waikiki Aquarium, makai of Kalakaua Avenue	3-1-030:003
	Makai tree – in front of the Waikiki War Memorial Natatorium, Diamond Head of the Waikiki Aquarium	3-1-031:003
	Mauka tree – in front of the Waikiki War Memorial Natatorium, Diamond Head of the Waikiki Aquarium	3-1-031:003
	Diamond Head tree – across the street from Diamond Head Tennis Court Center, along the makai side of Paki Avenue	3-1-043:001
	Ewa tree – across the street from Diamond Head Tennis Court Center, along the makai side of Paki Avenue	3-1-043:001
	Diamond Head corner of archery range, along Poni Moi Road near entrance to La Pietra	3-1-043:007
	Makai tree – across the street from the Diamond Head side of the Honolulu Zoo, makai side of the Waikiki Shell parking lot entrance	3-1-043:001

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Ficus benghalensis, Indian Banyan Tree (Cont.)	Mauka tree – across the street from the Diamond Head side of the Honolulu Zoo, makai side of Waikiki Shell parking lot entrance	3-1-043:001
	Grounds of Kaiulani School, 783 North King Street	1-5-005:016
	Grounds of St. Elizabeth’s Episcopal Church between 720 North King Street and 766 North King Street	1-7-031:048 and 1-7-031:064
	Iolani Palace grounds	2-1-025:002
	Moana Hotel Courtyard, 2365 Kalakaua Avenue	2-6-001:012
	2 trees – beside the Judiciary Building, Aliiolani Hale, 417 South King Street	2-1-025:003
	Parking lot, Walina Street, The Food Pantry Ltd., 2370 Kuhio Avenue	2-6-021:100
	Kuhio Beach Park	2-6-001:004
	Center of International Market Place, 2330 Kalakaua Avenue	2-6-022:038
	End of Magic Island	2-3-037:025
	1212 Punahou Street	2-4-007:002
	Thomas Square, 925 South Beretania Street, 4 trees surrounding fountain	2-4-001:001
Ficus benjamina, Benjamin Fig Tree	Entry circle to left of front lawn of Roosevelt High School	2-4-032:001
Ficus drupacea, Mysore Fig Tree	Schofield Barracks, tree located on the north side of Grant Hall, intersection of Waianae and McCornack Roads	N/A
Ficus elastica, Indian Rubber Tree	University of Hawaii/Manoa Campus, next to Campus Way, mauka side of Sinclair Library	2-8-023:003
Ficus macrophylla, Moreton Bay Fig Tree	Schofield Barracks, tree located at the southwest corner of Building 747, Quad I	N/A
	Kailua Road “Triangle Park,” center of Kailua	4-2-018:014
Ficus microcarpa, Chinese Banyan Tree	239 Kulamanu Place	3-1-040:061
	3 Trees – Kailua Road “Triangle Park,” center of Kailua	4-2-018:014
	1699 Walea Street	7-5-001:001
Ficus petiolaris, Blue Mexican Fig Tree	1941 Ualakaa Street	2-5-001:033
Ficus religiosa, Bo Tree	Moanalua Gardens, 2850 Moanalua Road*	1-1-009:004
	2616 Pali Highway	1-8-008:001
	Foster Botanical Garden, 1438 Nuuanu Avenue	1-7-008:002

* “Champion Trees of Hawaii,” in *American Forests*, May 1974.

(d) The following trees begin with the letters “g” through “l”:

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Garcinia mangostana, Mangosteen Tree	Castle Ranch, 1385 Maunawili Road	4-2-009:001
Gigasiphon macrosiphon	Foster Botanical Garden, 180 North Vineyard Boulevard	1-7-007:002
Guazuma ulmifolia, West Indian Elm Tree	State Department of Agriculture, 1428 South King Street*	2-4-005:018
Hernandia nymphaeifolia, Jack-in-the-box Tree	University of Hawaii/Manoa Campus, mauka Ewa side of Sinclair Library	2-8-023:003
Hibiscus tiliaceus, Hau Tree	3314 Halelani Drive	2-9-035:103
Hura crepitans, Sandbox Tree	2365 Oahu Avenue	2-9-005:056
Hydnocarpus anthelminthicus, Chaulmoogra Oil Tree	Foster Botanical Garden, 180 North Vineyard Boulevard	1-7-007:002
Hyphaene thebaica, Doom Palm, Gingerbread Palm	Foster Botanical Garden, 180 North Vineyard Boulevard*	1-7-007:002
Kigelia africana, Sausage Tree	115 Kuukama Street, Kailua	4-3-014:007
	Coast Guard Station on Kalanianaʻole Highway, Aina Haina	3-5-046:013
Lagerstroemia speciosa, Queen’s Crape Myrtle	Foster Botanical Garden, 1438 Nuuanu Avenue*	1-7-008:002
	Cooke Estate, 2859 Manoa Road	2-9-019:035
Lagunaria patersonia, White Wood Tree	Schofield Barracks, Glennan Avenue, between Buildings 687 and 688, Health Clinic	N/A
Litchi chinensis, Litchi Tree	2616 Pali Highway	1-8-008:001
	1699 Walea Street, Wahiawa	7-5-001:001
	Castle Ranch, 1385 Maunawili Road	4-2-009:001
Lonchocarpus domingensis, Guama Tree	Foster Botanical Garden, 1438 Nuuanu Avenue*	1-7-008:002

(e) The following trees begin with the letters “m” through “r”:

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Macadamia integrifolia, Macadamia Nut Tree	52 Robinson Lane	1-8-003:002
Mammea americana, Mammee Apple Tree	State Department of Agriculture, 1428 South King Street*	2-4-005:018

* “Champion Trees of Hawaii,” in *American Forests*, May 1974.

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Mangifera indica ‘Pirie,’ Mango Tree	2616 Pali Highway	1-8-008:001
Mangifera indica, Mango Tree	Center of Nuuanu Valley Park	2-2-034:028
	52 Robinson Lane	1-8-003:002
Manilkara zapota, Chicle Tree	2616 Pali Highway	1-8-008:001
	Foster Botanical Garden, 1438 Nuuanu Avenue*	1-7-008:002
Metroxylon amicarum, Caroline Ivory Nut Palm	Castle Ranch, 1385 Maunawili Road	4-2-009:001
Mimusops elengi, Pogada Tree	Foster Botanical Garden, 1438 Nuuanu Avenue*	1-7-008:002
	41 trees – Wheeler Army Airfield, 148 Curtis Loop, 16 trees line Curtis Loop, Wright Avenue and Warhawk Road; 25 trees line Curtis Loop and Vought and Wright Avenues framing the parking lot	N/A
Olea europaea, Olive Tree	2621 Anuenue Street	2-9-014:070
Phoenix canariensis, Date Palm Trees	Wheeler Army Airfield, row of palm trees on both sides of Wright Avenue, from Frutchey Road to Lilienthal Road	N/A
Phyllanthus emblica, Indian Gooseberry Tree	2616 Pali Highway	1-8-008:001
Pithecellobium dulce, Opiuma Tree	Fernhurst YWCA – 1566 Wilder Avenue	2-4-023:087
Pittosporum hosmeri, Hoawa Tree	Cooke Estate, 2859 Manoa Road	2-9-019:035
Plumeria obtusa, Singapore Plumeria Tree	902-B Prospect Street	2-2-004:048
Pritchardia lowreyana, Loulou Palm	Foster Botanical Garden, 1438 Nuuanu Avenue	1-7-008:002
Pseudobombax ellipticum, Pink Bombax Tree	Queen’s Medical Center, front lawn	2-1-035:003
	612 Ahakea Street	3-5-014:036
Pterocarpus indicus, Narra Tree	Tantalus Drive – on curve near #3665	2-5-012:006
	6 trees – Wheeler Army Airfield, Eastman Road, 2 trees approximately 100 feet north of Wright Avenue intersection, 2 trees 500 feet north of Wright Avenue intersection and 2 trees east of quarters at 459 Eastman Road	N/A

* “Champion Trees of Hawaii,” in *American Forests*, May 1974.

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Pterygota alata, Tattele Tree	Foster Botanical Garden, 180 North Vineyard Boulevard	1-7-007:002
Reynoldsia sandwicensis, Ohe Makai Trees	2 trees – Waimea Valley	6-1-001:002
Roseodendron donnell-smithii, Gold Tree	2119 Kaloa Way	2-8-020:040
	Cooke Estate, 2829 Manoa Road	2-9-019:025
Roystonea oleracea, Cabbage Palm	Harold L. Lyon Arboretum	2-9-055:006
	Foster Botanical Garden, 1438 Nuuanu Avenue*	1-7-008:002
	2 palms – Schofield Barracks, 227 General Loop	N/A
Roystonea oleracea and Roystonea regia, Cabbage Palms and Royal Palms	Total of 11 palms – Schofield Barracks, west side of Building 360, Flagler Road	N/A
Roystonea regia, Royal Palms	Both sides of Royal Palm Drive from Glen Avenue to Uuku Street, Wahiawa	N/A
	30 line old carriage road – Castle Ranch, 1385 Maunawili Road	4-2-009:001
	Palm Circle Drive, Fort Shafter, palms encircling parade field	1-1-008:005
Roystonea regia and Fraxinus americana, Royal Palms and White Ash Trees	91 Royal Palms and 79 White Ash Trees – Wheeler Army Airfield, planted alternately on both sides of Sperry and Langley Loops north of Wright Avenue	N/A

(f) The following trees begin with the letter “s” through “w”:

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Schotia brachypetala, Tree Fuchsia	203 Prospect Street	2-2-003:098
Spondias mombin, Hog Plum Tree	Foster Botanical Garden, 1438 Nuuanu Avenue*	1-7-008:002
Sterculia apetala, Panama Trees	4 trees – Ala Moana Regional Park	2-3-037:001
	Thomas Square, 925 South Beretania Street	2-4-001:001
Sterculia foetida, Skunk Tree	University of Hawaii/Manoa Campus, Ewa-makai corner of George Hall	2-8-023:003
	Schofield Barracks, 225 General Loop	N/A
	203 Prospect Street	2-2-003:098

* “Champion Trees of Hawaii,” in *American Forests*, May 1974.

Name of Tree and/or Scientific Name	Description of Location (if available)	TMK (if available)
Swietenia macrophylla, Mahogany Trees	2 trees – Schofield Barracks, Lewis Street, immediately north of the Foote Avenue intersection	N/A
	Schofield Barracks, Glennan Avenue, between Buildings 672 and 688, Health Clinic	N/A
Swietenia mahagoni, Mahogany Trees	Along Kalakaua Avenue between Beretania Street and Ena Road	N/A
	2616 Pali Highway	1-8-008:001
Syzygium malaccense, Mountain Apple Tree	Castle Ranch, 1385 Maunawili Road	4-2-009:001
Tamarindus indica, Tamarind Tree	Judiciary Building, Aliiolani Hale, Ewa Courtyard, 417 South King Street	2-1-025:003
	52 Robinson Lane	1-8-003:002
	Washington Place, 320 South Beretania Street, front lawn Ewa side	2-1-018:001
Terminalia catappa, Tropical Almond Tree	Foster Botanical Garden, 1438 Nuuanu Avenue	1-7-008:002
Wallaceodendron celebicum, Banuyo Tree	University of Hawaii, along Campus Road near Sinclair Library, across from Gartley Hall, 2444 Dole Street	2-8-023:003
Washingtonia robusta, Mexican Fan Palms	19 palms – Schofield Barracks, located on the west side of Dickman Road	N/A
	14 palms – Schofield Barracks, both sides of Glennan Street between Foote Avenue and Sargent Road	N/A

(Sec. 13-36.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 88-109, 91-38, 92-123, 00-54, 06-51, 10-23, 15-12, 16-34)

Sec. 41-13.8 Regulations.

- (a) Tree Removal or Destruction. It is unlawful for any person, corporation, public agency or other entity to remove or otherwise destroy any tree in the City and County of Honolulu which has been designated “exceptional” without approval from the city council, except as provided in Sec. 41-13.9. Any person who violates this section shall be fined not more than \$1,000.00.
- (b) Tree Maintenance.
- (1) It is unlawful for any person, corporation, public agency or other entity to alter the characteristic shape of any “exceptional” tree or remove any branch without first obtaining a permit issued by the department of parks and recreation.
 - (2) The department of parks and recreation shall have the necessary powers to make rules and regulations, pursuant to HRS Chapter 91, to establish the criteria, standards and conditions under which a permit may be issued.

(Sec. 13-36.8, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 41-13.9 Emergency situation.

In an emergency situation, where there is imminent danger to life or property, the owner of the exceptional tree shall petition for removal of the exceptional tree to the director of parks and recreation or the director’s authorized representative. The director of parks and recreation or the director’s authorized representative may grant the removal

of an exceptional tree upon a finding that such an emergency exists. The director of parks and recreation shall give notice of the action taken to the arborist advisory committee and to the council.

(Sec. 13-36.9, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 15-12)

Sec. 41-13.10 Violation—Penalty—Injunctive enforcement.

(a) Any person who violates Section 41-13.8 shall be subject to a fine of not more than \$1,000.00.

(b) In addition, any threatened violation of the provisions of this article, or of any rule or regulation promulgated pursuant to Section 41-13.8 (b) is declared to be a public nuisance and the corporation counsel shall institute such proceedings for injunctive or other civil relief as may be necessary to carry out the intent of this article.

(Sec. 13-36.9, R.O. 1978 (1983 Ed.); Sec. 13-36.10, R.O. 1987 Supp.)

Sec. 41-13.11 Severability.

If any section, paragraph, subsection, clause or phrase of this article is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this article.

(Sec. 13-36.10, R.O. 1978 (1983 Ed.); Sec. 13-36.11, R.O. 1987 Supp.)

Sec. 41-13.12 Appeals.

Any person or persons aggrieved by an action of the city council may within 30 days of such action file an appeal to the circuit court.

(Sec. 13-36.11, R.O. 1978 (1983 Ed.); Sec. 13-36.12, R.O. 1987 Supp.)

Article 14. Vehicular Advertising*

Sections:

41-14.1 Definitions.

41-14.2 Vehicular advertising prohibited.

41-14.3 Business identification permitted.

41-14.4 Violation—Penalty.

Sec. 41-14.1 Definitions.

“Business identification sign” means any sign, graphics or lettering upon a vehicle, relating to the company name, trade insignia, trademarks, products distributed, manufactured or sold or services performed by the business enterprise owning or leasing the vehicle. Vehicular business identification sign shall not include any poster, banner, light, model or any other device separately attached to the vehicle.

“Consideration” means any of the three or any combination thereof: (1) any money; or (2) thing of value; or (3) economic benefit conferred on or received by any person in return for advertising services rendered or to be rendered.

“Person” is as defined in Section 1-4.1 of this code.

“Pole trailer” means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as pipes, poles or structural members capable, generally of sustaining themselves as beams between the supporting connections.

“Semitrailer” means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a vehicle whether propelled by motor or human power and so constructed that some part of its weight including that of its load rests upon or is carried by another vehicle.

“Trailer” means every vehicle with or without motive power, other than a pole trailer, drawn by a vehicle whether propelled by motor or human power and designed to carry persons or property, and so constructed that no appreciable part of its weight rests upon the towing vehicle.

***Editor’s Note:** The ordinance codified as this article, Ord. 79-23, was declared unconstitutional on its face by the U.S. District Court for the District of Hawaii in *Beetleboards of America, Inc., et al., v. the City and County of Honolulu, et al.*, Civil No. 79-0198, and the City and County of Honolulu and other defendants were permanently enjoined from enforcing or attempting to enforce Ord. 79-23, either directly or indirectly.

“Vehicle” means every device in, upon or by which any person or property, which would include signs, is or may be transported or drawn upon a roadway or highway. This definition shall include a vehicle, whether it is propelled by motor or moved by human power.
(Sec. 13-37.1, R.O. 1978 (1983 Ed.))

Sec. 41-14.2 Vehicular advertising prohibited.

No person shall use a vehicle and/or trailer as defined herein, whether it is in operable or nonoperable condition, to display in any manner whatsoever, on any highway, street or private property, any advertising device for consideration as defined herein, including, but not limiting the generality of the foregoing to any poster, banner, writing, picture, painting, light, model, display, emblem, notice, illustration, insignia, symbol and any other form of advertising sign or device.
(Sec. 13-37.2, R.O. 1978 (1983 Ed.))

Sec. 41-14.3 Business identification permitted.

Nothing in this article shall prohibit the identification of a business enterprise, as defined in Section 41-14.1, upon a vehicle and/or trailer, provided however:

- (a) The vehicle is registered in the name of the business entity; and provided, that such identification will not constitute a hazard to motorists or will impair the operation of the vehicle.
- (b) The vehicle and/or trailer is primarily used for the purpose of and in the ordinary conduct of the business of the owner or lessee of the vehicle. The vehicle and/or trailer, however, cannot be used only for the purpose of advertising. Any subterfuge of the owner or lessee of the vehicle or trailer to promote the sale of its product, material, supplies or services by situating its vehicle and/or trailer in a strategic location on any highway, street or private property calculated to attract the attention of motorists and/or pedestrians to its advertisement in circumvention of state and county billboard advertising or sign laws shall not be permitted under this section.

(Sec. 13-37.3, R.O. 1978 (1983 Ed.))

Sec. 41-14.4 Violation—Penalty.

(a) Summons or Citation.

- (1) There shall be provided for use by police officers, a form of summons or citation for use in citing violators of this article which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawaii and the City and County of Honolulu.
- (2) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving to the violator a carbon copy of the citation and provide for the dispositions of the original and any other copies.
- (3) Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

(b) Penalty. Any person who violates any provision of this article shall, upon conviction, be punished by a fine not less than \$25.00 nor more than \$500.00, or by imprisonment not exceeding three months, or by both.

(c) Every day any violation of this article shall continue shall constitute a separate offense.

(Sec. 13-37.4, R.O. 1978 (1983 Ed.))

Article 15. Regulations Governing Public Shows

Sections:

- 41-15.1 Definitions.
- 41-15.2 License required—Applications.
- 41-15.3 Conditions of licenses.
- 41-15.4 Rejection of application—Suspension or revocation of license.
- 41-15.5 Promulgation of rules and regulations.
- 41-15.6 Notice—Appeal—Hearings board.
- 41-15.7 Violation—Penalty.
- 41-15.8 Injunction upon violation of laws and ordinances.

Sec. 41-15.1 Definitions.

As used in this article, unless the context clearly requires otherwise:

“Owner” or “licensee” (the latter term will apply when a license is issued) means an individual, partnership, corporation, association or any other business or commercial entity whether or not established for profit, who or which owns, leases or rents any permanent or temporary structure as defined hereinabove which is used to accommodate more than one person to observe, view, watch or witness public shows; or any exhibitor, promoter or producer of a public show provided that an exhibitor, promoter or producer shall not be deemed an owner if the owner, lessee or tenant of the permanent or temporary structure for public shows has a license therefor.

“Public show” means any exhibition, show or performance produced, presented, staged, shown, displayed, exhibited or performed to which an admission fee is charged or for which a fee is collected in any permanent or temporary structure designed to accommodate more than one person to observe, view, watch or witness such public shows and which is subject to licensing under HRS Sections 445-161 to 445-164. A permanent structure shall include but is not limited to auditoriums, theaters, concert halls, arenas, convention halls, meeting rooms and restaurants with stages, while a temporary structure shall include but is not limited to tents consisting of canvas or plastic materials. Exempted hereunder are public shows which are subject to the control and supervision of any board, commission, department or agency of the state or the city and any of the aforementioned permanent or temporary structures owned and controlled by the state or city. (Sec. 13-38.1, R.O. 1978 (1983 Ed.))

Sec. 41-15.2 License required—Applications.

(a) License Required. No owner of a permanent or temporary structure designed to accommodate more than one person to observe, view, watch or witness a public show shall utilize same for public shows without first obtaining a license therefor as provided in HRS Sections 445-161 to 445-165.

(b) Application for License. Any owner seeking an original license or a renewal shall file a written application with the director of finance which shall contain such information and shall be in such form as the director of finance may prescribe.

(c) Verification. All applicants shall certify on the application that the statements, information and data contained in the application in support of the application are true and correct.

(d) Term and Fee for License. The term and fee for such license shall be as prescribed in HRS Sections 445-161 and 445-162, respectively.

(Sec. 13-38.2, R.O. 1978 (1983 Ed.))

Sec. 41-15.3 Conditions of licenses.

Every license issued hereunder shall be subject to the following conditions:

(a) License Nontransferable—Close Out of Business. No license issued hereunder shall be transferable or assignable. If a licensee voluntarily or involuntarily terminates the business for whatever reason or reasons during the term for which the license was issued, the licensee shall, within five days from the date of such termination, give the director of finance written notice thereof and surrender the licensee’s license for cancellation.

(b) Posting. Any license issued hereunder shall be posted in a conspicuous place on the licensed premises where any person may examine same.

(c) Obscene, Indecent or Immoral Public Show Prohibited—Applicable Standard. No licensee shall present or permit the presentation of an obscene, indecent or immoral public show on or within the licensed premises. To determine whether or not a public show is obscene, indecent or immoral, the following standard which was established by the United States Supreme Court in *Miller v. California*,* shall be applied:

(1) Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;

(2) Whether the work depicts or describes, in a patently offensive way, sexual conduct such as:

- (A) Representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, or
 - (B) Representations or descriptions of masturbation, excretory functions and lewd exhibitions of the genitals; and
 - (3) Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.
- (Sec. 13-38.3, R.O. 1978 (1983 Ed.))

Sec. 41-15.4 Rejection of application—Suspension or revocation of license.

- (a) Authorization. The director of finance is authorized to reject any application for an original license or renewal or suspend or revoke any license based on the grounds set forth herein.
 - (b) Grounds for Rejection of Application for an Original License or Renewal.
 - (1) The applicant has failed to fill out an application as prescribed.
 - (2) There was deliberate falsification or misrepresentation in the application for license or renewal.
 - (c) Grounds for Suspension or Revocation of License.
 - (1) The licensee has presented or permitted the presentation of an obscene, indecent or immoral public show on the licensed premises based on the standards prescribed hereinbefore.
 - (2) During the term of the existing license, the licensee or the licensee's employee(s) has been convicted of promoting pornography on the licensed premises in violation of HRS Sections 712-1214 and 712-1215; or
 - (3) The licensee has violated any of the provisions of this article, HRS Sections 445-161 to 445-165, or any rules and regulations promulgated by the director of finance as authorized herein.
 - (d) Period of Revocation. No owner whose license is revoked shall be eligible to apply for a new license until the expiration of a 12-month period commencing from the effective date of revocation.
- (Sec. 13-38.4, R.O. 1978 (1983 Ed.))

Sec. 41-15.5 Promulgation of rules and regulations.

The director of finance is authorized to promulgate such additional rules and regulations as prescribed in HRS Chapter 91 as the director of finance may deem necessary to implement or administer the provisions of this article and HRS Sections 445-161 to 445-165. (Sec. 13-38.5, R.O. 1978 (1983 Ed.))

Sec. 41-15.6 Notice—Appeal—Hearings board.

- (a) Notice and Hearing. In every case where it is proposed to refuse to issue a license or to suspend or revoke a license, the director of finance shall give the party concerned notice and hearing in conformity with HRS Chapter 91.
 - (1) The director of finance shall notify in writing the applicant or licensee of any adverse decision based on the provisions of this article, together with the reasons therefor. The notice shall also include a statement that the applicant or licensee may appeal the decision of the director of finance and provide space on the notice so that the applicant or licensee may indicate that such person desires to exercise the appeal and request a hearing. Such notice may be personally served upon the applicant or licensee or sent by certified mail, return receipt requested;
 - (2) The written notice of the director of finance shall contain specific reasons for its adverse decision;

provided such notice shall not act as a stay upon the continued showing of the particular show until the appeal panel has made its decision, pursuant to subsection (b) of this section. It shall also contain a statement that the applicant or licensee has the right to appeal an adverse decision of the director of finance within 10 working days as stated herein; and

- (3) Upon receipt of such notice of appeal and request for hearing, the director of finance shall forthwith request the mayor to appoint a hearings panel so that the appeal can be heard.

(b) **Hearings Panel.**

- (1) The mayor is authorized to appoint three officers of the executive branch, excluding the prosecutor and corporation counsel and their subordinates, who shall be members of the hearings panel so an appeal can be heard;

- (2) The hearings panel shall conduct such hearing as prescribed in HRS Chapter 91;

- (3) The hearings panel is authorized to establish procedures for its hearings and promulgate rules and regulations therefor, as prescribed in HRS Chapter 91;

- (4) Whenever its decisions are adverse to the applicant or licensee, the panel shall issue written findings of fact, conclusions of law, decision and order; and

- (5) If the decision of the panel is to suspend or revoke any license, it shall orally order the licensee to cease and desist forthwith any public show for which the license herein had been issued unless otherwise ordered by a court of competent jurisdiction.

- (c) **Judicial Review.** Any owner or licensee aggrieved by the decision and order of the hearings panel may seek judicial review of such decision and order in any court of competent jurisdiction as provided in HRS Section 91-14.

(Sec. 13-38.6, R.O. 1978 (1983 Ed.))

Sec. 41-15.7 Violation—Penalty.

Any person, owner or licensee violating any of the provisions of this article shall be subject to the penalties prescribed in HRS Section 445-165, and upon such conviction, the court is authorized to declare that any license issued by the director of finance is either suspended or revoked.

(Sec. 13-38.7, R.O. 1978 (1983 Ed.))

Sec. 41-15.8 Injunction upon violation of laws and ordinances.

Notwithstanding any law to the contrary, the prosecuting attorney, in addition to or while in the course of, or having instituted prosecution against a person, owner or licensee hereunder, may seek injunctive relief, pursuant to HRS Section 603-23, to enjoin or prohibit any act or practice in violation of this article, HRS Sections 445-161 to 445-165 or any rules and regulations promulgated by the director of finance as authorized herein.

(Sec. 13-38.8, R.O. 1978 (1983 Ed.))

Article 16. Permit and License Fees for Driving Motor Vehicles

Sections:

41-16.1 Definitions.

41-16.2 License and permit fees.

41-16.3 Disposition of proceeds.

Sec. 41-16.1 Definitions.

As used in this article, unless the context otherwise requires:

“Driver’s license” means a license authorizing a person to operate the category of motor vehicles specified in HRS Section 286-102.

“Duplicate” means an instruction permit or driver’s license issued to replace one that is lost, destroyed or illegible.

“Instruction permit” means the permit referred to in HRS Section 286-110.

“Renewal” means any driver’s license issued to the same person subsequent to an original license or to the same person subsequent to the reissuance of a driver’s license.

(Sec. 13-28.1, R.O. 1978 (1983 Ed.); Am. Ord. 97-53, 06-12; 08-29)

Sec. 41-16.2 License and permit fees.

- (a) The issuance or renewal of a driver’s license shall be \$5.00 per year or fraction thereof.
- (b) The issuance of an instruction permit or any renewal thereof shall be subject to the payment of a fee of \$5.00.
- (c) The issuance of a duplicate permit or license shall be subject to the payment of a fee of \$6.00.
- (d) The reinstatement fee for a suspended or revoked current or expired license shall be \$20.00.
- (e) The fee for the category type one, two or three road test given to applicants shall be \$8.00 for each test and is in addition to all other fees enumerated in this section. The fee shall be paid before the road test is administered and may be refunded only if the applicant does not begin the road test. Failure to pass the road test shall not be grounds for a refund.
- (f) There shall be established a road test reservation fee for each road test reservation made by an applicant. The road test reservation fee shall be the same as the fee established in subsection (e) and shall be paid by the applicant before the reservation is made. This fee shall be applied to the payment of the road test fee. If an applicant fails the road test, fails to appear, appears late, or cancels a reservation, the road test reservation fee shall be forfeited.
- (g) There shall be established a test fee of \$2.00 for each written or machine examination and \$10.00 for each oral examination taken by applicants. Failure to pass the examination shall not be grounds for a refund.

(Sec. 13-28.2, R.O. 1978 (1983 Ed.); Am. Ord. 88-52, 95-32, 97-53, 06-12, 08-29, 11-8)

Sec. 41-16.3 Disposition of proceeds.

All fees collected pursuant to Section 41-16.2 shall become a realization of the city.

(Sec. 13-28.3, R.O. 1978 (1983 Ed.))

Article 17. Motor Vehicle Weight Tax

Sections:

- 41-17.1 Vehicle weight tax.**
- 41-17.2 Delinquent penalties.**
- 41-17.3 Shelter buses.**

Sec. 41-17.1 Vehicle weight tax.

- (a) The rate and the minimum tax at which all vehicles and motor vehicles shall be taxed as provided by HRS Section 249-2, as amended, shall be as provided in subsections (b), (c), (d) and (e).
- (b) Motor Vehicles Designed Primarily for the Purpose of Carrying Passengers. The rate for motor vehicles designed primarily for carrying passengers shall be:

Cents per pound of vehicle net weight	Effective date
6.0	January 1, 2018
7.0	January 1, 2019

This category shall include, but is not limited to, motor vehicles primarily designed to carry passengers, buses, ambulances and hearses.

- (c) (1) Trucks or Noncommercial Motor Vehicles Having a Net Weight of 6,500 Pounds or Less. The rate for trucks and noncommercial motor vehicles having a net weight of 6,500 pounds or less and which are not being operated for compensation or commercial purposes shall be:

Cents per pound of vehicle net weight	Effective date
6.0	January 1, 2018
7.0	January 1, 2019

The owner of such truck or noncommercial motor vehicle who desires to have such vehicle taxed at the rate provided in this subdivision shall comply with the requirements in subdivision (2).

- (2) For original registration under this category, the owner shall:
 - (A) File an application with the director of finance for registration of a noncommercial motor vehicle;
 - (B) Register the vehicle under an individual’s name, or if the vehicle is leased, provide proof that the vehicle is leased to an individual and not to a company; and
 - (C) Pay the applicable weight tax and registration fees.

When the vehicle is currently registered as a commercial vehicle and the owner wishes to reclassify the vehicle under this category, the owner shall, in addition to the above, also surrender the vehicle’s current certificate of registration and license plates.

When the owner has complied with the foregoing requirements, and has paid the applicable fees, the director of finance shall issue a set of passenger vehicle license plates, emblem and a new certificate of registration.

- (d) Trucks or Commercial Vehicles. The rate for trucks, commercial vehicles and other vehicles designed for carrying property or for purposes other than the carrying of passengers shall be:

Cents per pound of vehicle net weight	Effective date
6.5	January 1, 2018
7.5	January 1, 2019

This category shall include, but is not limited to, trucks, truck tractors and road tractors, trailers and semitrailers; provided, that trucks and noncommercial vehicles that qualify under subsection (c) are exempted from this category.

- (e) Minimum Tax. The minimum tax assessed and collected by reason of this section shall in no case be less than \$12.00.

(Sec. 14-1.1, R.O. 1978 (1983 Ed.); Am. Ord. 89-79, 92-65, 93-110, 95-62, 03-42, 05-016, 09-15, 17-24)

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Sec. 41-17.2 Delinquent penalties.

Any vehicle weight tax imposed by this article for any year and not paid when due, shall be deemed delinquent. An annual penalty of \$8.00 for vehicles taxed at the passenger rate and \$20.00 for vehicles taxed at the commercial rate shall be added to, and become part of, the tax to be collected. (Sec. 14-1.2, R.O. 1978 (1983 Edition); Am. Ord. 89-79, 95-62)

Sec. 41-17.3 Shelter buses.

(a) Notwithstanding the provisions of Article 17, Chapter 41, shelter buses shall be taxed at zero cents per pound of the net weight of such vehicle.

(b) For purposes of this section:

“Shelter bus” means a commercial passenger vehicle that is at least 40 feet in length that:

- (1) Has been refitted to be used and is used as a temporary shelter for the homeless;
- (2) Is suitable for such use, and complies with all laws, regulations and standards governing its use as a temporary shelter, including health and safety regulations; and
- (3) Complies with, and is used, operated, and maintained in accordance with all applicable laws, rules, and regulations governing such vehicles.

The owner’s certification as to the foregoing may be deemed acceptable.

(Added by Ord. 06-17; Am. Ord. 07-11)

Article 18. Motor Vehicle Registration

Sections:

41-18.1 Fee for registration, number plates and tags or emblems.

41-18.2 Fee for tag or emblem in subsequent years.

41-18.3 Fees for the issuance of a new series of number plates, or replacement of lost or mutilated number plates, tags or emblems.

41-18.4 Fee for dealer correction.

41-18.5 Fee for transfer of title.

41-18.6 Fee for duplicate certificates of title.

41-18.7 Registration of new and used motor vehicles.

Sec. 41-18.1 Fee for registration, number plates and tags or emblems.

(a) The annual fee for the registration of a motor vehicle shall be \$20.00.

(b) Fees for the number plates and/or tags or emblems shall be:

- (1) Number plate \$5.00
- (2) Tag or emblem.....50

(c) For a registration involving a reassignment of number plates, pursuant to a request from an owner of a motor vehicle registered in the City and County of Honolulu, to another motor vehicle subsequently acquired by the owner, the fee shall be five dollars.

(d) All fees collected under this section shall be deposited in the general fund.

(Sec. 14-2.1, R.O. 1978 (1983 Ed.); Am. Ord. 92-65, 97-42, 99-24)

Sec. 41-18.2 Fee for tag or emblem in subsequent years.

The fee for the issuance of a tag or emblem for a motor vehicle, upon payment of the applicable tax, in any year in which the number plates do not evidence the payment of the current year’s tax, shall be 50 cents. (Sec. 14-2.3, R.O. 1978 (1983 Ed.))

Sec. 41-18.3 Fees for the issuance of a new series of number plates, or replacement of lost or mutilated number plates, tags or emblems.

The fees for the issuance of a new series of number plates, tags, or emblems shall be the same as the fees charged in Section 41-18.1. (Sec. 14-2.4, R.O. 1978 (1983 Ed.))

Sec. 41-18.4 Fee for dealer correction.

The fee for each instance of correction of the registration records shall be ten dollars. (Sec. 14-2.6, R.O. 1978 (1983 Ed.); Am. Ord. 95-31)

Sec. 41-18.5 Fee for transfer of title.

The fee charged to issue a new certificate of title shall be ten dollars. (Sec. 14-2.7, R.O. 1978 (1983 Ed.); Am. Ord. 95-31)

Sec. 41-18.6 Fee for duplicate certificates of title.

The fee for duplicate certificates of title shall be ten dollars. (Sec. 14-2.8, R.O. 1978 (1983 Ed.); Am. Ord. 95-31)

Sec. 41-18.7 Registration of new and used motor vehicles.

The director of budget and fiscal services, in coordination with the director of customer services, shall enter into contracts with car dealerships and motor vehicle rental companies for the registration of new and used motor vehicles consistent with any statute, ordinance, or provision of any applicable collective bargaining agreement. The director may adopt rules pursuant to chapter 91 as may be necessary for the application, bonding, and procedural requirements of the contractor. (Added by Ord. 17-7)

Article 19. General Provisions—Inspection Costs

Sections:**41-19.1 Definitions.****Sec. 41-19.1 Definitions.**

Wherever used in this article and Article 20, the following words shall have the meanings herein indicated.

“Applicant” means any person requesting inspectional services from the city.

“Cost” means the amount to be charged by the city for overtime inspections at a rate to be recomputed annually by the director of finance based on current salaries and applicable fringe benefits for inspectors.

“Inspection” means and includes all inspections provided for by law. (Sec. 10-1.1, R.O. 1978 (1983 Ed.))

Article 20. Overtime Inspections

Sections:**41-20.1 Charges.**

Sec. 41-20.1 Charges.

- (a) When an applicant requests that an inspection be made during any hour after the normal working hours of an inspector in any workday or on a Saturday, Sunday or legal holiday, the applicant shall bear the cost of such inspection, and shall pay said cost to the city, prior to the final approval of any project so inspected.
- (b) The moneys so realized shall be general realizations and the same shall be deposited into the general fund. (Sec. 10-2.1, R.O. 1978 (1983 Ed.))

Article 21. Smoking**Sections:**

- 41-21.1 Definitions.**
41-21.2 Prohibition of smoking in certain places.
41-21.3 Exceptions.
41-21.4 Signs.
41-21.5 Violation—Penalty.
41-21.6 Enforcement—Administration.
41-21.7 Fire code.
41-21.8 Severability.
41-21.9 Conflict with HRS Chapter 328J.

Sec. 41-21.1 Definitions.

As used in this article, unless the context requires otherwise:

“Bar,” for a July 1 to June 30 period, means a place that was devoted to the serving of alcoholic beverages for on-site consumption by patrons and where the service of food was only incidental to the consumption of such beverages during the previous July 1 to June 30 period, whether or not the place was open for business during that entire period. When the preceding sentence does not apply to a place because it was not open for business in the previous July 1 to June 30 period, the place may choose to be a “bar” from the date it first opens for business until the next June 30 if, during that time, the place is devoted to the serving of alcoholic beverages for on-site consumption by patrons and the service of food in the place is only incidental to the consumption of such beverages. “Incidental” means less than one third of gross sales of alcoholic beverages as opposed to food sales.

“Building” means a structure with at least three walls.

“Bus stop” means any place where the department of transportation services has directed the placement of a bus stop sign designating a location where the city’s bus service stops to service passengers. Such sign may include route numbers and regulatory and other information.

“Commercial building” means a building occupied by two or more commercial tenants.

“Electronic smoking device” means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe, or hookah pen, and any cartridge or other component of the device or related product, whether or not sold separately.

“Food court” means an area with more than one restaurant and seating that is not subject to the exclusive use or possession of any restaurant, but is made available to the patrons of every restaurant in or other tenant of the area. The definition of “food court” under Section 9-3.5 shall not apply to this article.

“Food court seating area” means the portion of a food court with unreserved seating for patrons of any restaurant or other tenant of the food court. An “enclosed or partially enclosed food court” means a food court that is within an “enclosed or partially enclosed area” as defined under Section 41-21.2(j).

“Hotel” means the same as is defined by Section 21-10.1.

“Multifamily dwelling” means the same as is defined by Section 21-10.1.

“Open to the public” means areas within any building available for use by or accessible to the general public during the normal course of business conducted therein by either private or public entities.

“Public park” means any park, park roadway, playground, athletic field, beach, beach right-of-way, tennis court, swimming pool, or other recreation area or facility under the control, maintenance and management of the department of parks and recreation. “Public park” does not include a public thoroughfare defined as a “mall” under Section 29-1.1 unless the public thoroughfare has been (1) accepted, dedicated, or named by the council expressly as a “public park”

or “park”; (2) placed under the control, maintenance, and management of and classified expressly as a “public park” or “park” by the department of parks and recreation; or (3) constructed or situated within a larger specific recreation area or facility listed in the preceding sentence.

“Public place” means the same as defined by Section 29-1.1.

“Restaurant” means any retail eating establishment where food is served or provided for on-site consumption by seated patrons that is authorized by the state department of health to operate as a food establishment, including any private food establishment or club in which only members or their guests are permitted, but excluding a “bar.” If a restaurant includes an area devoted to the serving of alcoholic beverages, that area shall be deemed part of the “restaurant,” not a separate “bar,” for this article. An establishment that is a “restaurant” shall have that status for all hours of operation.

“Retail department store” means a retail establishment organized or arranged into five or more departments and consisting of a total selling floor space of at least 22,000 square feet.

“Separate open air area of a restaurant” means an area, roofed or not, of a restaurant’s premises that is both:

- (1) Directly exposed to the outside environment on every side, except a side abutting (A) an indoor area of the restaurant, (B) any building that does not house the restaurant, or (C) any other enclosed or partially enclosed place or area where smoking is prohibited by this article or HRS Chapter 328K; and
- (2) Entirely separated from any abutting area, building, or place listed under subdivision (1) by either of the following:
 - (A) At least 10 feet of space that is outside the walls of the building housing the restaurant; or
 - (B) A solid wall (i) without any opening or (ii) with either or both of the following, but no other opening: a closable doorway that stays closed except when a person passes through or a closable serving window that stays closed except when food, drink, or eating ware is passed through. A “solid wall” means a wall constructed of rigid material that reaches from floor to ceiling. It may have an unopenable plate glass window. A “serving window” means a window through which food, drink, or eating ware may be passed from one area of a restaurant to another area of the restaurant.

A side of a restaurant area shall be deemed “directly exposed to the outside environment” if the entire side is unenclosed or enclosed only by a barrier of not more than four feet high from the floor. An “indoor area of a restaurant” means the area within the walls of the building housing all or part of a restaurant’s premises.

“Smoke” or “smoking” means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form. “Smoking” includes the use of an electronic smoking device.

“Tobacco product” means any product made or derived from tobacco, that contains nicotine or other substances, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. “Tobacco product” does not include any product specifically approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product that is being marketed and sold solely for that approved purpose.

(Sec. 13-42.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 93-24, 93-68, 97-20, 02-06, 13-27, 13-28, 17-53)

Sec. 41-21.2 Prohibition of smoking in certain places.

Except as otherwise provided herein, smoking is prohibited in the following places within the City:

- (a) Elevators in buildings generally open to and used by the public, including elevators in apartment and other multiunit residential buildings.
- (b) Patient rooms, wards, waiting rooms, lobbies and public hallways of public and private health care facilities, including, but not limited to, hospitals, clinics, and physicians’ and dentists’ offices.
- (c) Any room which is primarily used for exhibiting any motion picture, stage drama, dance, musical performance, or other similar performance during the time that said room, hall, or auditorium is open to the public for such exhibition.
- (d) Museums, libraries, and galleries.
- (e) All areas within city-owned or controlled buildings except any dwelling unit or lodging unit, as those terms are defined by Section 21-10.1, when not used as a child care, adult day care, or health care facility.

- (f) Except as provided in Section 41-21.3 or as limited by this subsection, all areas in business or charitable establishments. For the purposes of this subsection, a “business” means any sole proprietorship, partnership, joint venture, business trust, limited liability company, business corporation, professional corporation, or other business entity formed for profit-making purposes, and “business establishment” includes, but is not limited to, any of the following establishments operated by a business:
- (1) Any school;
 - (2) Any hotel, except individual hotel rooms;
 - (3) Any financial institution;
 - (4) Any industrial, commercial, or wholesale establishment;
 - (5) Any utility;
 - (6) Any retail establishment where goods or services are sold, leased, or otherwise provided to the public or to another business;
 - (7) Any bar within an enclosed or partially enclosed food court; or
 - (8) Any restaurant; except that smoking will be permitted in a separate open air area of a restaurant when the business operating the restaurant refrains from designating the area as nonsmoking pursuant to subsection (h).
- (g) Rest rooms. Any rest room open to the public in places specified in this section.
- (h) Notwithstanding Section 41-21.3, any area of any bar, hotel room, restaurant, or governmental property which has been designated by the owner, operator, manager, or other persons having control of such property as a nonsmoking area and marked with a “no smoking” sign or signs.
- (i) All enclosed or partially enclosed areas within multifamily dwellings that are open to the common use of all unit owners or residents, including but not limited to lobbies, hallways, corridors, stairways, waiting areas, and recreation areas within multifamily dwellings. For purposes of this subsection, “enclosed or partially enclosed areas” means areas closed in by a roof or overhang and at least one wall. An area commonly described as a lobby or roofed mall is deemed to be enclosed or partially enclosed for purposes of this subsection.
- (j) All enclosed or partially enclosed areas within commercial buildings not subject to the exclusive use and possession of a tenant and open to the common use of the tenants of the building and their employees and customers, including but not limited to common entrance areas, lobbies, malls, food court seating areas, hallways, corridors, escalators, stairways, and waiting or rest areas within commercial buildings. For purposes of this subsection, an enclosed or partially enclosed area is any area for human occupancy that is contained on two or more sides by walls and is covered by a roof, ceiling, or overhang, such that the area of all permanent openings from the space to the open air is less than 50 percent of the combined areas of the walls and ceiling, roof, or overhang. If a wall does not meet the floor or the ceiling, roof, or overhang, the calculation will be based on the vertical projection of the wall to the plane of the floor or the plane of the ceiling, roof or overhang. Permanent openings do not include doors or windows which are capable of being closed.
- (k) In the event that a building is both a multifamily dwelling and a commercial building as defined in this article, all areas except for private residences.
- (l) All motor vehicles:
- (1) That are owned or leased by the city; or
 - (2) In which a person under eighteen years of age is present.
- (m) All public parks, recreation areas and facilities under the maintenance of the department of parks and recreation or the department of enterprise services, except for the open air areas of a municipal golf course and such areas within each of the following sites as the department of parks and recreation or the department of enterprise services may designate by appropriate signs as areas within which smoking is permissible:
- (1) Honolulu Zoo;
 - (2) Hanauma Bay Nature Preserve;
 - (3) Koko Crater Botanical Garden; and
 - (4) Waikiki Shell.
- (n) Any bus stop. The smoking prohibition applies to the area of the bus stop that extends out from the bus stop sign or the footprint of the shelter in every direction by 20 feet. The footprint of the shelter is defined by vertical planes extending down from the outermost edges of the shelter overhang or roof. The prohibition contemplated in this subsection only applies to public places.

(Sec. 13-42.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 93-24, 93-68, 93-92, 96-58, 97-20, 99-64, 02-06, 13-5, 13-27, 13-28, 17-53)

Sec. 41-21.3 Exceptions.

Smoking shall not be prohibited in the following places under this article:

- (a) Private residences, except when used as a child care, adult day care or health care facility;
- (b) Any hotel room;
- (c) Any bar that is not within an enclosed or partially enclosed food court; and
- (d) Any separate open air area of a restaurant where smoking is permitted by the business operating the restaurant pursuant to Section 41-21.2(f)(8).

(Sec. 13-42.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 97-20, 02-06, 13-27, 13-28)

Sec. 41-21.4 Signs.

- (a) Clearly legible signs that include the words “smoking prohibited by law” with letters of not less than one inch in height must be conspicuously posted in all places where smoking is prohibited by this article by the owner, operator, manager, or other person having control of such place. This subsection does not apply to privately owned motor vehicles, unless the vehicles are used in public transportation under the authority of the State or the city.
- (b) Alternate means of notification (individual place cards, film clips, etc.) may be employed provided the effect thereof is equivalent to the notice given by signs described in subsection (a) of this section.
- (c) Any person violating any of the provisions of this section shall be issued a notice of violation and shall comply with the provisions of this section within 10 days. Thereafter, the violation shall carry a fine of not more than \$25.00. Each violation cited shall constitute a separate offense.

(Sec. 13-42.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 97-57, 02-06, 17-53)

Sec. 41-21.5 Violation—Penalty.

- (a) It is unlawful for any person to smoke in a place within the City and County of Honolulu where smoking is prohibited.
- (b) Except as otherwise provided, any person violating any of the provisions of this article shall be punished by:
 - (1) A fine of not more than \$100.00 for a first violation;
 - (2) A fine not exceeding \$200.00 for a second violation within one year of the date of the first violation; and
 - (3) A fine not exceeding \$500.00 for each additional violation of this article within one year of the date of the preceding violation.

(Sec. 13-42.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 93-68, 97-20)

Sec. 41-21.6 Enforcement—Administration.

- (a) Summons or Citation.
 - (1) There shall be provided for use by an officer or employee of the city duly authorized to issue a summons or citation, or any police officer a form of summons or citation for use in citing violators of this article which does not provide for the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court, shall be printed on a form commensurate with the form of other summons or citations used in modern methods of arrest, and so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawaii and the City and County of Honolulu.
 - (2) In every case, when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe that the violator be given a carbon copy of the citation and provide for the disposition of the original and any other copies.
 - (3) Every citation shall be numbered, and each carbon copy shall bear the same number as its original.
- (b) Enforcement and administration of the provisions of Section 41-21.4 shall be under the jurisdiction of the department of planning and permitting of the City and County of Honolulu, which department shall have the power to formulate any applicable rules and regulations necessary to carry out the provisions of Section 41-21.4.
- (c) Except as provided in subsection (b) of this section, enforcement of this chapter shall be under the jurisdiction of the Honolulu police department.

- (d) In addition to the foregoing, any police officer or other officer or employee of the city duly authorized to issue a summons or citation may eject from the premises any person to whom a citation has been issued and who continues to smoke after the person has been requested by the police officer or other duly authorized officer or employee to stop smoking.

(Sec. 13-42.6, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 02-06)

Sec. 41-21.7 Fire code.

Nothing in this article shall be construed as superseding applicable fire code provisions. Where a conflict between the provisions of this article and the fire code arises, the fire code provision will prevail.

(Sec. 13-42.7, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 41-21.8 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

(Sec. 13-42.8, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 41-21.9 Conflict with HRS Chapter 328J.

- (a) If any provision of this article conflicts with any provision of HRS Chapter 328J, or any successor statute, the more stringent provision shall control.
- (b) If any violation of this article also constitutes a violation of HRS Chapter 328J, or any successor statute, the violator shall be subject to the penalties and procedures set forth under this article.
- (c) This section shall not be deemed to limit the powers granted to the city under HRS Chapter 328J or any successor statute, to enforce, administer, and adopt rules necessary to carry out HRS Chapter 328J, or any successor statute.

(Added by Ord. 93-24; Am. Ord. 02-06, 13-28)

Article 22. Banners Displayed from Lampposts

Sections:

- 41-22.1 Declaration of legislative intent.**
- 41-22.2 Definitions.**
- 41-22.3 Powers and duties.**
- 41-22.4 Application required—Compliance.**
- 41-22.5 Application process and fees.**
- 41-22.6 Submittal to commission on culture and the arts.**
- 41-22.7 Denial of banner application.**
- 41-22.8 Revocation of approval.**
- 41-22.9 Rules and regulations.**

Sec. 41-22.1 Declaration of legislative intent.

- (a) While it is in the public interest to foster sightliness and physical good order within the City and County of Honolulu, it is also in the public interest to promote public festivals that can bring the residents of the City and County of Honolulu and their visitors together and promote ethnic traditions, customs, historical or cultural events, or athletic competition, and foster the development of tourism.
- (b) The attractive decoration of public places and festivals complement one another. Organizers of festivals such as Aloha Week should be allowed to apply to the city requesting that attractive banners be displayed from public lampposts on authorized streets at the expense of the community organization in order to promote the public interest.

(Sec. 13-43.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 41-22.2 Definitions.

The meaning of the terms in this article shall be as follows:

“Authorized street” means within the City and County of Honolulu, so much of Kalakaua Avenue between its intersection with Ala Moana Boulevard and its intersection with Kapahulu Avenue; so much of Ala Moana Boulevard between its intersection with Atkinson Drive and its intersection with Kalakaua Avenue; so much of King Street between its intersection with Bethel Street and its intersection with Kapiolani Boulevard; and so much of Bishop Street between its intersection with Queen Street and its intersection with Hotel Street.

“Commission on culture and the arts” means the commission defined in Article 2, Chapter 3, ROH 1989.

“Community organization” means a nonprofit corporation organized under HRS Chapter 414D.

“Convention center zone streets” means the following portions of the following streets within the City and County of Honolulu: the portion of Atkinson Drive between its intersection with Kapiolani Boulevard and its intersection with Kahakai Drive; the portion of Kapiolani Boulevard between its intersection with Kalakaua Avenue and its intersection with Atkinson Drive; and the portion of Kalakaua Avenue between its intersection with Kapiolani Boulevard and its intersection with Ala Wai Boulevard.

“Director” means the director of the department of transportation services, City and County of Honolulu, or the director’s designated deputy.

“Festival” means a series of at least five public events sponsored by a community organization, held within the City and County of Honolulu during a period of at least 10 consecutive days.

“Lamppost” means any pole erected solely for street lighting purposes on which there are no externally attached overhead electric, telephone and communications conductors, wires, and cables mounted thereon.

“Public event” means an event that promotes ethnic, historical or cultural values, or athletic competition, or is intended to be a general public gathering or assembly in a public place, or an event that is held at the Hawaii Convention Center.

(Sec. 13-43.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-58, 98-53, 09-7)

Sec. 41-22.3 Powers and duties.

- (a) (1) The director is authorized to approve or deny an application from any community organization requesting the display of banners from public lampposts situated on authorized streets during any festival in accordance with the provisions of this article. The director is further authorized to revoke any such approval for noncompliance in accordance with the provisions of this article.
- (2) The director is authorized to approve or deny an application from the Hawaii Convention Center or the Hawaii Visitors Convention Bureau requesting the display of banners from public lampposts on convention center zone streets for a public event in accordance with the provisions of this article or to revoke any such approval for noncompliance in accordance with the provisions of this article.
- (3) If the director approves:
 - (A) An application from a community organization requesting the display of banners during a festival that promotes a public interest by fostering ethnic traditions, customs, historical or cultural events or athletic competition, and the development of tourism; or
 - (B) An application from the Hawaii Convention Center or the Hawaii Visitors Convention Bureau requesting the display of banners for a public event to be held at the Hawaii Convention Center;

it shall be a public duty for the director of the department of facility maintenance to then fasten the banners to the designated public lampposts in order to promote the public interest.

(b) The commission on culture and the arts shall have, in addition to the powers and duties set forth in Article 2, Chapter 3, the power and duty to recommend to the director banners of a design, manufacture and aesthetic quality appropriate to be displayed from lampposts situated on any authorized street or on a convention center zone street in accordance with the provisions of this article.

(Sec. 13-43.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 98-53)

Sec. 41-22.4 Application required—Compliance.

(a) No banner shall be displayed from a lamppost situated on an authorized street or on a convention center zone street unless an application has been submitted and approved by the director in accordance with the provisions of this article and in no event shall the display of banners exceed a duration of 14 days.

(b) The fastening, display and removal of any banner shall be performed by the department of facility maintenance and only after the application for said banner has been approved by the director.

(Sec. 13-43.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 98-53)

Sec. 41-22.5 Application process and fees.

(a) A verified application by a community organization for approval to display banners on lampposts situated upon authorized streets shall be executed by the chief executive of the community organization and shall include, but not be limited to, the following information:

(1) The name and address of the applicant.

(2) The names and addresses of all officers and directors of the applicant.

(3) A copy of the charter of incorporation of the applicant.

(4) A description of the festival, including the places, dates and times of each public event sponsored by the applicant.

(5) A description of the number of banners to be displayed and the streets on which and lampposts from which it is proposed that the banners will be displayed.

(6) The duration of the banner display.

(7) The public purpose to be served by the banner display.

(8) Any other information required by the director and necessary to fully evaluate the application.

(b) A verified application from the Hawaii Convention Center or the Hawaii Visitors Convention Bureau for approval to display banners on lampposts situated upon convention center zone streets shall provide the information required under subdivision (a)(1) and subdivisions (a)(5) through (8) only.

(c) There shall also be submitted as part of the application, the following:

(1) A specimen of the banner to be displayed, incorporating the identical material, fasteners and artwork to be used in all the banners to be displayed.

(2) An agreement by the applicant that it shall bear the full expense of producing the banners.

(3) An agreement by the applicant to assume the defense of and indemnify and save harmless the city, its officers and employees from all suits, actions, damages or claims to which the city may be subjected resulting from the display, maintenance and removal of the banners from lampposts situated on authorized streets or convention center zone streets. The city shall not be held responsible for returning the banners to the community organization or the Hawaii Convention Center or the Hawaii Visitors Convention Bureau in their original condition.

(d) Fees. Every applicant shall pay to the director of budget and fiscal services a fee of \$65.00 for each and every banner to be displayed. No banner shall be displayed from any lamppost by the department of facility maintenance unless and until the full fee required has been paid in advance.

(Sec. 13-43.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 98-53, 09-7)

Sec. 41-22.6 Submittal to commission on culture and the arts.

The director shall, within five days of the receipt of the application, submit a copy of the application to the commission on culture and the arts. The commission on culture and the arts shall, within 30 days of the receipt

of the application, submit its findings or recommendations regarding the banner design, manufacture and aesthetic quality to the director. (Sec. 13-43.6, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 41-22.7 Denial of banner application.

(a) No application shall be approved by the director:

(1) Except upon a finding by the director that the banner display during the festival will promote the public

interest by fostering ethnic traditions, customs, historical or cultural events, athletic competition or the development of tourism; provided that such a finding shall not be required of a banner display on convention center zone streets for a public event at the Hawaii Convention Center;

(2) If the director believes that the public health, safety or welfare will be impaired at any time during the banner display; or

(3) If the community organization or the Hawaii Convention Center or the Hawaii Visitors Convention Bureau fails or refuses to comply with the provisions of this article or any other applicable statute, ordinance or rule.

(b) Written notice of the approval or denial of an application shall be provided to the applicant as soon as practicable. If the application is denied, said written notice shall state the reasons for denial.

(c) Any person aggrieved by the decision of the director to grant or deny an application may appeal the decision of the director, and the appeal shall be set for hearing in accordance with rules and regulations promulgated by the director for such hearings. Notice of the hearing and the conduct of the hearing shall comply with HRS Chapter 91 (Administrative Procedure Act).

(Sec. 13-43.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 98-53)

Sec. 41-22.8 Revocation of approval.

(a) The director may revoke any approval of an application made under this article at any time for, but not limited to, any of the following reasons:

(1) Failure or refusal by the community organization or the Hawaii Convention Center or the Hawaii Visitors Convention Bureau to comply with the provisions of this article or any other applicable statute, ordinance or rule;

(2) Failure by the community organization or the Hawaii Convention Center or the Hawaii Visitors Convention Bureau to promptly provide replacement of any banner deemed by the director to be damaged, soiled or in disrepair;

(3) The public health, safety or welfare is jeopardized; or

(4) When any banner which by reason of its size, location, movement, content, coloring or manner of illumination constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstructing or detracting from the visibility of any official traffic control device or by diverting or tending to divert the attention of drivers of moving vehicles from the traffic movement on the public streets and roads.

(b) Whenever the director revokes approval of the banner application under the conditions set forth in subsection (a) of this section, the applicant may appeal said revocation in accordance with the rules and regulations authorized.

(Sec. 13-43.8, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 98-53)

Sec. 41-22.9 Rules and regulations.

The director is authorized to promulgate rules and regulations, pursuant to the procedures set forth in HRS Chapter 91, as are necessary to implement, administer and enforce the provisions of this article. (Sec. 13-43.9, R.O. 1978 (1983 Ed.))

Article 23. Neighborhood Watch Signs

Sections:

41-23.1 Purpose.

41-23.2 Definitions.

41-23.3 Powers and duties.

41-23.4 Request for approval.

41-23.5 Rules.

Sec. 41-23.1 Purpose.

The purpose of this article is to provide assistance to communities which have organized a neighborhood watch program aimed at crime prevention and to encourage the formation of neighborhood watch programs by other communities by authorizing the department of transportation services of the City and County of Honolulu to construct and install neighborhood watch signs at appropriate locations on public property at the county's expense. (Sec. 13-44.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 41-23.2 Definitions.

As used in this article:

"Director" means the city director of the department of transportation services.

“Neighborhood watch program” means a neighborhood program established in accordance with the Honolulu neighborhood security watch program sponsored by the Honolulu police department.

“Neighborhood watch sign” means a sign designed, constructed and placed on public property by the department of transportation services pursuant to the provisions of this article.

“Public property” means any curbstone, lamppost, pole, parking meter, bridge, street sign or traffic light located on public property. (Sec. 13-44.2, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 41-23.3 Powers and duties.

(a) Pursuant to the provisions of this article, the director is authorized to:

(1) Design, construct and place on public property signs indicating that the area is protected by a neighborhood watch.

(2) Grant or deny a request for the placement of neighborhood watch sign or signs.

(3) In consultation with the neighborhood watch program and a duly authorized representative of the Honolulu police department, determine the number and location of all neighborhood watch signs.

(4) Remove neighborhood watch signs located in neighborhoods where the neighborhood watch program has terminated upon prior written notice to the affected neighborhood.

(b) If a request for the placement of neighborhood watch signs is approved by the director, it shall be the duty of the director, within 60 days of the approval date, to place or cause to be placed on public property neighborhood watch signs at designated locations.

(c) It shall be the duty of the director to comply with the applicable sign provisions contained in the land use ordinance, Chapter 21, Article 7.

(Sec. 13-44.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-58)

Sec. 41-23.4 Request for approval.

- (a) Any neighborhood watch program wishing to have a neighborhood watch sign or signs placed in the neighborhood shall submit a written request to the director. The request shall include:
- (1) The geographical boundaries of the neighborhood for which the request is being made.
 - (2) The number of signs being requested.
 - (3) The approximate location of each sign.
- (b) Each request shall be signed by an authorized representative of the neighborhood watch program for which the request is being made and by a duly authorized police officer of the Honolulu police department.
- (c) No request for the placement of signs shall be approved by the director unless 60 percent of the homes within the boundaries of the designated neighborhood participate in the neighborhood watch program.
- (Sec. 13-44.4, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 41-23.5 Rules.

The director is authorized to adopt rules pursuant to HRS Chapter 91, as are necessary to implement, administer, and enforce the provisions of this article. (Sec. 13-44.5, R.O. 1978 (1987 Supp. to 1983 Ed.))

Article 24. Enforcement of Water Safety Rules by Lifeguards**Sections:**

- 41-24.1 Authority.**
- 41-24.2 Administration.**
- 41-24.3 Rules.**

Sec. 41-24.1 Authority.

Lifeguards employed by the city are authorized to accept appointment by the state department of transportation as enforcement officers, in accordance with the provisions of HRS Section 266-24, and to carry out water safety enforcement duties and responsibilities assigned by the state department of transportation. (Added by Ord. 88-03)

Sec. 41-24.2 Administration.

Appointment of and service by city lifeguards as enforcement officers under this article shall be governed by applicable rules of the state department of transportation, the City and County of Honolulu, department of parks and recreation, and all other applicable laws, including the provisions of Article 8, Chapter 1, ROH 1990. (Added by Ord. 88-03)

Sec. 41-24.3 Rules.

Subject to HRS Chapter 91, the director of the department of parks and recreation shall adopt rules having the force and effect of law for the implementation, administration and enforcement of this article. (Added by Ord. 88-03)

Article 25. Damage to Public Property**Sections:**

- 41-25.1 Definitions.**
- 41-25.2 Damage to public property.**
- 41-25.3 Cost of repairs or replacement.**
- 41-25.4 Violation—Penalty.**
- 41-25.5 Procedure.**
- 41-25.6 Rules and regulations.**

Sec. 41-25.1 Definitions.

As used in this article, the following words and terms shall have the following meanings, unless the context indicates a different meaning or intent:

“Damage” means physical injury to public property, both real and personal, which results in the loss or substantial diminishment of use of the property because of physical danger, inconvenience or distress caused by noise, smoke, dust, vibration, odors, rubbish, refuse, garbage, fuel or other oils, or any other unhealthful or unclean substance.

“Director” means the director of budget and fiscal services.

“Person” means an individual, firm, partnership, corporation, association or other entity.

“Public property” means and includes, but is not limited to, any building, park, roadway, field, beach, other recreational area or facility, or any other property under the control and management of the city, including public property leased by the city to another person but used for the benefit of the public.

(Added by Ord. 89-47; Am. Ord. 91-27, 97-02, 18-18)

Sec. 41-25.2 Damage to public property.

Damage to public property which results in the loss of use of the property, as defined more fully in this article, is a public nuisance and subject to the provisions of this article. (Added by Ord. 89-47)

Sec. 41-25.3 Cost of repairs or replacement.

- (a) Any person who is responsible for damage to public property constituting a public nuisance, including damage that causes the partial or complete closure or other loss of use or value, or loss of public property, shall be responsible for repairing or otherwise remedying such damage, including but not limited to payment of costs of repairing, cleaning, or replacing the damaged property.
- (b) Issuance of the bill for the costs shall be authorized by the director and shall contain the amount to be charged by the city.
- (c) The costs billed shall be the actual or estimated costs associated with the repair, cleaning, or replacement of the damaged property plus any administrative expenses.

(Added by Ord. 89-47; Am. Ord. 18-18)

Sec. 41-25.4 Violation—Penalty.

In addition to any other penalties or remedies provided in this article, any person who is responsible for damage to public property which results in the public being denied customary and usual access to or use of the property for more than 24 hours, shall be subject to a fine of not more than \$1,000.00 per day, for every day in which the public is denied partial or complete use of the property. (Added by Ord. 89-47)

Sec. 41-25.5 Procedure.

- (a) The director is authorized to exercise all administrative or other powers available in carrying out the purposes of this article, including maintaining an action for an injunction to restrain the activity which is causing or has caused damage to public property.
- (b) All remedies and penalties under this article shall be enforced in civil proceedings by the corporation counsel.

(Added by Ord. 89-47)

Sec. 41-25.6 Rules and regulations.

The director is authorized to promulgate rules and regulations, pursuant to HRS Chapter 91, as are necessary to implement, administer and enforce the provisions of this article. (Added by Ord. 89-47)

Article 26. Maintenance of Channels, Streambeds, Streambanks and Drainageways

Sections:

41-26.1 Purpose and intent.

41-26.2 Definitions.

41-26.3 Maintenance of streams.

41-26.4 Right of entry and inspection.

41-26.5 Notice of violation—Order to maintain, clear, and remove.

41-26.6 City authorized to clear and maintain.

- 41-26.7 Charge to owner.**
- 41-26.8 Chief engineer to keep record.**
- 41-26.9 Statement of chief engineer.**
- 41-26.10 Lien procedure.**
- 41-26.11 Civil fine.**
- 41-26.12 Issuance of notice of violation and order.**
- 41-26.13 Request for extension of time to complete maintenance and clearing.**
- 41-26.14 Effect of order—Right to hearing.**
- 41-26.15 Judicial enforcement of order.**
- 41-26.16 Judicial enforcement of article.**
- 41-26.17 Nonexclusiveness of remedies.**
- 41-26.18 Appeal in accordance with statute.**
- 41-26.19 Severability.**

Sec. 41-26.1 Purpose and intent.

- (a) The provisions which are set forth hereinafter are authorized pursuant to the provisions of HRS Section 46-11.5, relating to the maintenance of channels, streambeds, streambanks and drainageways.
- (b) The provisions set forth hereinafter are intended to provide the necessary power and authority to the department of facility maintenance, an executive agency of the city, to provide for and enforce the maintenance of channels, streambeds, streambanks and drainageways, including their exits to the ocean, in suitable condition to carry off stormwaters, prevent flooding and to ensure that the natural flow of water runs unimpaired; and for the removal from the channels, streambeds, streambanks and drainageways, any debris, vegetation, silt or other items or material of any nature, which is likely to create an unsanitary condition, blockage or otherwise become a public nuisance to the health, safety and welfare of the residents of the city; provided, that to the extent any of the foregoing work is a private responsibility, the responsibility may be enforced by the city in lieu of the work being done at city expense, and any private entity or person refusing to comply with any final order issued by the city shall be in violation of this article and HRS Section 46-11.5.

(Added by Ord. 89-59; Am. Ord. 17-38)

Sec. 41-26.2 Definitions.

“Chief engineer” means the director and chief engineer of the department of facility maintenance or the chief engineer’s authorized representative.

“City” means the City and County of Honolulu.

“City-owned” means the same as defined in Section 41-43.1.

“Department” means the government unit known as the department of facility maintenance of the City and County of Honolulu.

“Owner” means the fee simple owner of record, lessee of record, administrator, administratrix, executor, executrix, personal representative, receiver, trustee, property management agent or any other individual corporation, or unincorporated association, who has the use, control or occupation of a stream in its entirety, or portion thereof including its channels, streambeds, streambanks and drainageways, or the mouth of a stream at the ocean, with claim of ownership, whether such person’s interest be in absolute fee or a lesser estate.

“Person” means a human being, a corporation, an unincorporated association or other entity.

“Streams” means natural, altered or improved channels that have seasonal or continuous water flows as a result of either surface stormwater runoff or groundwater influx, or both. Streams include channels, streambeds, streambanks, drainageways and stream mouths. Streams do not include ditches, flumes, reservoirs, lagoons, holding and silting basins, lakes, ponds and their associated ditches, underground drain lines or systems, and any portions of irrigation systems. (Added by Ord. 89-59; Am. Ord. 17-38, 18-40)

Sec. 41-26.3 Maintenance of streams.

- (a) The owner of any stream has the duty to maintain, dredge, and clear such stream, or applicable portion thereof, so that the natural flow of water runs unimpaired. The owner shall also be responsible for the removal of any debris, vegetation, silt or other items or material of any kind that may interfere with the natural flow of water or is likely to create an unsanitary condition or otherwise become a public nuisance.
- (b) The chief engineer shall conduct an inspection of all city-owned streams that are lined with concrete or other impervious material no less than annually and all other city-owned streams no less than semi-annually, and shall

remove or cause to be removed any debris, vegetation, silt, or other item or material of any kind that may interfere with the natural flow of water or is likely to create an unsanitary condition or otherwise become a public nuisance. In determining the scheduling of the annual or semi-annual inspections and removal of debris, vegetation, silt, or other items or materials, as applicable, the chief engineer shall consider seasonal patterns of elevated flood risk, such as that associated with hurricane activity, and approved, applicable permits. (Added by Ord. 89-59; Am. Ord. 17-38, 18-40)

Sec. 41-26.4 Right of entry and inspection.

The chief engineer or any authorized employee of the department may, during reasonable hours and upon notification to the person or entity with a right of possession or control over any stream, enter any premises or real property in the discharge of official duties to inspect, investigate and to ensure such stream is maintained as required in this article. During the maintenance and clearing of any stream and the removal of any debris, vegetation, silt, or other material, the department shall have access thereto for inspection purposes during reasonable hours. (Added by Ord. 89-59)

Sec. 41-26.5 Notice of violation—Order to maintain, clear, and remove.

The chief engineer is authorized and empowered to notify the owner of any stream to maintain and clear any stream, and to remove any debris, vegetation, silt or other items or material of any nature, as is necessary for the proper maintenance of such stream. Such notice shall be as provided for in Section 41-26.12. (Added by Ord. 89-59)

Sec. 41-26.6 City authorized to clear and maintain.

Upon the failure, neglect or refusal of any owner or agent so notified to complete maintenance and clearing of any stream; and to remove any debris, vegetation, silt or other material from such stream within 30 days after notice has been given as provided for in Section 41-26.12, or within 30 days after the date of mailing of such notice or when service of notice cannot be made, provided that same was properly addressed to the last known address, of such owner or agent, the chief engineer is authorized and empowered to pay for such maintenance and clearing and removal of debris and vegetation out of city funds or to order the same to be done by city employees or by contract. The chief engineer or authorized employees of the department, including any contractor or the contractor's agent with whom the chief engineer contracts hereunder, are authorized to enter upon said property for the purposes of maintenance and clearing of such streams and the removal of any debris or vegetation described in the notice. Before work is commenced by the chief engineer or authorized employees of the department, or contractor, any owner may perform the necessary maintenance and clearing of the stream and the removal of debris or vegetation at the owner's own expense. (Added by Ord. 89-59)

Sec. 41-26.7 Charge to owner.

When the city has performed the necessary maintenance and clearing of a stream and removal of debris or has paid for such work, the costs thereof, including overhead costs, plus accrued interest at the rate of seven percent per annum, shall be charged to the owner of such stream and the owner shall be billed therefor by mail. The bill shall apprise the owner that failure to pay the bill will result in a lien. Interest at the rate of seven percent per annum shall accrue from the 31st calendar day after the bill has been mailed to the owner for payment in the event the same has not been paid prior thereto. (Added by Ord. 89-59)

Sec. 41-26.8 Chief engineer to keep record.

The chief engineer shall cause to be kept in the department a permanent record containing:

- (a) A description of each parcel of property containing a stream for which a notice to maintain, clear and remove has been given;
- (b) The name of the owner of record or agent;
- (c) The date on which such notice was mailed and posted or given to the owner or agent;
- (d) The charges incurred by the city for maintenance and clearing of the stream and removal of debris and all incidental expenses in connection therewith; and
- (e) A brief summary of the work performed. Each entry shall be made as soon as practicable after completion of such work.

(Added by Ord. 89-59)

Sec. 41-26.9 Statement of chief engineer.

Where the full amount due the city is not paid by such owner within 30 calendar days after the bill has been mailed for payment, the chief engineer shall cause to be recorded with the director of finance a statement showing the cost and expense incurred for the work, the date the work was done, and the location of the property on which said work was done, and file the same with the director of finance, who shall refer the collection thereof to the corporation counsel. (Added by Ord. 89-59)

Sec. 41-26.10 Lien procedure.

Any work done by the city hereunder is deemed to be done pursuant to quasi-contract or constructive contract between the city and the owner. Based on the foregoing contractual relationship, if the owner fails to pay the amount duly noted on the statement filed by the chief engineer, the corporation counsel may proceed to file a lien pursuant to the provisions of HRS Section 636-3, or any other appropriate lien procedures. (Added by Ord. 89-59)

Sec. 41-26.11 Civil fine.

Any person who violates any provision of this article shall, upon notice issued pursuant to Section 41-26.12, be deemed to have committed a civil violation and shall be liable for a civil fine not to exceed \$500.00 a day for each day in which such violation persists. (Added by Ord. 89-59)

Sec. 41-26.12 Issuance of notice of violation and order.

If the chief engineer determines that any person is violating any provision of this article or any rule adopted thereunder, the chief engineer may have the person served, by certified mail or delivery, with a notice of violation and order.

(a) Contents of the Notice of Violation.

(1) The notice shall include at least the following information:

- (A) Date of the notice;
- (B) The name and address of the person noticed;
- (C) The section number of the ordinance which has been violated;
- (D) The nature of the violation; and
- (E) The location and date of the violation.

(2) The notice shall describe the work to be done and shall state that if the work is not completed within 30 calendar days after receipt of the notice of violation, or notice as provided in Section 41-26.6, the chief engineer may enter upon the property and perform the maintenance and clearing of such stream and remove any debris, vegetation, or other material necessary for the proper maintenance of such stream, and the cost thereof shall be a lien on the property. The lien shall be in addition to any other remedies provided for enforcement of this article.

(3) The notice shall inform the person that failure, neglect or refusal to correct the violation or to complete the work described in the notice of violation and order within 30 calendar days will result in a civil fine not to exceed \$500.00 a day for each day the violation persists, to be assessed by the city commencing 31 calendar days after receipt of the notice of violation and order, or notice as provided in Section 41-26.6. The civil fine shall be in addition to any other remedies as provided for in this article.

(b) Contents of the Order.

(1) The order may require the person to do any or all of the following:

- (A) Cease and desist from the violation;
- (B) Correct the violation at the person's own expense before a date specified in the order; and
- (C) Pay a civil fine not to exceed \$500.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.

(2) The order shall advise the person of the finality of the order 30 days after the date of its mailing or delivery unless written request for a hearing is mailed or delivered to the chief engineer within said 30 days.

(Added by Ord. 89-59)

Sec. 41-26.13 Request for extension of time to complete maintenance and clearing.

Any person served with a notice of violation and order may request in writing to the chief engineer for an extension of time to complete the maintenance and clearing of any stream.

- (a) The written request for an extension of time shall be delivered or mailed and postmark dated to the chief engineer within 15 calendar days of the delivery of the notice of violation and order.
- (b) An extension of the 30-day time limit in the order may be granted in writing by the chief engineer only for good cause and shall be only for a reasonable period of time necessary to complete the work required, as determined by the chief engineer.
- (c) A person aggrieved by a decision of the chief engineer under this section shall have a right to a hearing as provided for in Section 41-26.14, provided the person submits a written request for a hearing to the chief engineer within 10 calendar days after delivery of the chief engineer's decision.

(Added by Ord. 89-59)

Sec. 41-26.14 Effect of order—Right to hearing.

- (a) The provisions of the order issued by the chief engineer under Section 41-26.12 shall become final 30 days after the date of the mailing or delivery of the order unless within those 30 days the person subject to the order requests in writing a hearing before the chief engineer. The request for hearing shall be considered timely if the written request is delivered or mailed and postmark dated to the chief engineer within said 30 days.
- (b) Upon receipt of the written request for hearing, the chief engineer shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the chief engineer in accordance with the provisions of HRS Chapter 91. Following said hearing, the chief engineer may affirm, modify or rescind the order as in the opinion of the chief engineer may be appropriate.

(Added by Ord. 89-59)

Sec. 41-26.15 Judicial enforcement of order.

The chief engineer may institute a civil action in any court of competent jurisdiction for enforcement of any order issued pursuant to Sections 41-26.12, 41-26.13 and 41-26.14. Where the civil action has been instituted to enforce the civil fine imposed by said order, the chief engineer need only show that notice of violation and order was served, a hearing was held or the time granted for requesting a hearing had expired without such a request, the civil fine imposed and that the fine imposed has not been paid. (Added by Ord. 89-59)

Sec. 41-26.16 Judicial enforcement of article.

The chief engineer may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this article, or any rule adopted pursuant thereto, in addition to any other remedy provided for under this article. (Added by Ord. 89-59)

Sec. 41-26.17 Nonexclusiveness of remedies.

The remedies provided in this article for enforcement of the provisions of this article or any rule adopted pursuant thereto shall be in addition to any other remedy as may be provided by law. (Added by Ord. 89-59)

Sec. 41-26.18 Appeal in accordance with statute.

If any person is aggrieved by the order issued by the chief engineer pursuant to Sections 41-26.12, 41-26.13 or 41-26.14, the person may appeal the order in the manner provided in HRS Chapter 91; provided, that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction. (Added by Ord. 89-59)

Sec. 41-26.19 Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of conditions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. (Added by Ord. 89-59)