

Chapter 40

PROHIBITED ACTIVITIES IN THE CITY

Articles:

1. Use of Intoxicating Liquors in Certain Public Places
2. Obnoxious Substances
3. Watersheds--Reservoirs
4. Iceboxes and Refrigerators
5. The Sale to, Possession of or Use by Minors of Chemical Substances Containing Volatile Organic Solvents
6. Aerial Advertising
7. Use of Sound Amplifying Device in Public Buildings
8. Sale of Toilets and Urinals
9. Sale of Showerheads and Faucets
- (10. Distribution of Tobacco Products and Tobacco Promotional Materials. Repealed by Ord. 98-10)
10. Advertisement and Distribution of Cigarettes and Tobacco Products
11. Regulation of Distribution, Acquisition, Possession and Use of Graffiti Implements
12. Graffiti Damage to Public Property
13. Ephedrine-containing Products
14. Products Containing Gamma Hydroxybutyrate
15. Laser Pointers and Harassment with Laser Beams
16. Prostitution-related Public Nuisance Abatement
17. Unofficial Age Identification Card
18. Bidi Cigarette Prohibitions
19. Advertisement of Intoxicating Liquor and Liquor Products
20. Herbal Cigarettes
21. Additional Areas of Significant Prostitution-related Activity
22. Wearing of Masks or Disguises
23. Replica Guns
24. Urinating or Defecating in Public Prohibited in the Waikiki Special District
25. Urinating or Defecating in Public Prohibited Outside of the Waikiki Special District

Article 1. Use of Intoxicating Liquors in Certain Public Places

Sections:

- 40-1.1 Declaration of legislative intent--Definitions.**
40-1.2 Prohibition in public areas--Exceptions.
40-1.3 Criminal Penalties--Enforcement.

Sec. 40-1.1 Declaration of legislative intent--Definitions.

- (a) It is declared to be the legislative intent of the council to prohibit the open and unrestricted use or consumption of intoxicating liquors on or within certain municipally owned or controlled public areas and buildings and on streets and sidewalks open to the public.
- (b) For purposes of this article:
- (1) "Intoxicating liquor" shall mean the same as in HRS Section 281-1;
 - (2) "Sidewalk" shall mean the same as in HRS Section 291C-1; and
 - (3) "Street" shall mean the same as "street or highway" in Section 15-2.23.
- (Sec. 13-4.1, R.O. 1978 (1983 Ed.); Am. Ord. 03-31)

Sec. 40-1.2 Prohibition in public areas--Exceptions.

- (a) No person shall possess, other than in a container in the manufacturer's sealed condition, intoxicating liquor on any street or sidewalk, or in any public park, public playground, public school ground, public off-street parking area or any building located thereon.
- (b) The prohibitions contained in subsection (a) of this section shall not apply to:
- (1) Intoxicating liquor procured from a vendor dispensing intoxicating liquor pursuant to a permit or license issued by the city when the intoxicating liquor is possessed or consumed in a manner and in a place consistent with the terms and conditions of such permit or license;
 - (2) The consumption or possession of an intoxicating liquor in a motor vehicle upon any public street, road, or highway; or
 - (3) The possession of a container of wine authorized to be removed from liquor-licensed premises pursuant to HRS Section 281-31(q), provided that the container has been corked or resealed.
- (c) Subject to the provisions of HRS Chapter 281, as amended, and if the sale and consumption of intoxicating liquor is permitted by concession agreement, the prohibitions contained in subsection (a) of this section shall not apply within the licensed premises (as described in a liquor license) of concessionaires of the city located:
- (1) On any public golf course;
 - (2) At those facilities and properties under the jurisdiction and supervision of the director of enterprise services;
 - (3) In public parks where private donations were used to construct a memorial pavilion wherein restaurant operation is feasible.

- (d) Notwithstanding the provisions of subsection (a), any director of an outdoor theater which is enclosed by a fence and which is located within a public park may permit the consumption of intoxicating liquor within the confines of such outdoor theater, if so requested by a tenant of such outdoor theater for the term or period of such tenancy and under such restrictions and conditions as may be imposed by said director.
- (e) Notwithstanding the provisions of subsection (a), the director of the department of parks and recreation may permit nonprofit organizations which sponsor and conduct festivals that promote ethnic traditions, customs, and culture and foster the development of tourism, to sell intoxicating liquors within Kapiolani Park by designating one day during Aloha Week during which the sale of beer and wine is permitted between the hours of three p.m. to nine p.m.; provided, that such nonprofit organizations have properly obtained the appropriate park permits and temporary licenses for the sale of intoxicating liquor.

(Sec. 13-4.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 03-31)

Sec. 40-1.3 Criminal Penalties--Enforcement.

- (a) The penalties provided in this article are criminal penalties and the article shall be enforced by the Honolulu police department as provided by law.
- (b) A police officer may arrest an alleged violator of any provision of this article or may issue a citation in lieu of arrest as provided in HRS Section 803-6.
- (c) Penalty. Any person convicted of a violation of any provision of this article shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not more than 30 days, or both such fine and imprisonment.

(Sec. 13-4.3, R.O. 1978 (1983 Ed.); Am. Ord. 00-43)

Article 2. Obnoxious Substances

Sections:

- 40-2.1 Declaration of legislative intent.**
- 40-2.2 Definitions.**
- 40-2.3 Prohibitions.**
- 40-2.4 Exceptions.**
- 40-2.5 Permit to be obtained by agency.**
- 40-2.6 Conditions.**
- 40-2.7 Vendor to obtain license.**
- 40-2.8 Licenses -- Permits renewability.**
- 40-2.9 Violation -- Penalty.**
- 40-2.10 Severability.**

Sec. 40-2.1 Declaration of legislative intent.

The council of the City and County of Honolulu finds that the use and possession of devices capable of emitting gases or obnoxious substances, as defined in Section 40-2.2, by unauthorized persons creates a potential danger to the peace and well being of the community at large; but nevertheless, such devices when properly used, serve a useful purpose. Therefore, pursuant to the power granted in Section 2-102 of the revised charter and HRS Section 46-1.5 to protect health, life and property and to protect the general welfare and safety of the inhabitants of the city, this article regulating the sale, purchase, possession, transportation and use of obnoxious substances and granting the chief of police of the City and County of Honolulu authority to supervise the sale, purchase, possession, transportation and use thereof according to the standards hereinafter stated, is enacted to insure that the dissemination of devices emitting obnoxious substances is limited to those agencies and their employees who have a legitimate need thereof. The terms of this article shall be liberally construed to effectuate the purpose stated herein. (Sec 13-16.1, R.O. 1978 (1983 Ed.))

Sec. 40-2.2 Definitions.

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

"Agency" means all such organizations, public and private, whose operations are determined by the chief of police to require the use of one or more of the devices enumerated in Section 40-2.3 to accomplish a proper purpose.

"Chief of police" means the chief of police of the City and County of Honolulu or the chief of police's authorized subordinate.

"Devices" means all shells, cartridges, bombs, guns or aerosol capable of emitting obnoxious substances in gas, vapor form, liquid or solid form.

"Employee" means all officers, agents and employees of an agency whether or not such officer, agent or employee has been issued a permit.

"Gun" means all revolvers, pistols, rifles, fountain pen guns, riot guns, shot guns and cannons portable or fixed except those regularly manufactured, and used with firearm ammunition.

"Obnoxious substances" means those substances or the derivatives thereof enumerated in Section 40-2.3.

"Shell, cartridge or bomb" means all shells, cartridges or bombs capable of being discharged or exploded by the use of percussion caps, fuses, electricity or other means to cause or permit the release or emission of the substance enumerated in Section 40-2.3. (Sec. 13-16.2, R.O. 1978 (1983 Ed.))

Sec. 40-2.3 Prohibitions.

- (a) No person shall use or possess with intent to use any shell, cartridge, bomb, gun or other device capable of emitting any liquid, gaseous or solid substance or any combination thereof, which is injurious to person or property, or which is nauseous, sickening, irritating or offensive to any of the senses; to injure, molest, discomfort, discommode or coerce another in the use or control of the individual's person or property.

- (b) No person shall possess, discharge, use, transport, sell or offer to sell any shell, cartridge, bomb, gun or other device capable of emitting chloracetophenone (CN), o chlorobenzalmononitrile (CS) or any derivatives thereof in any form.
 - (c) No person shall possess, discharge, use, transport, sell or offer to sell any shell, cartridge, bomb, gun or other device capable of emitting oleo resin capsicum or any derivative thereof used to repel animals.
- (Sec. 13-16.3, R.O. 1978 (1983 Ed.); Am. Ord. 01-18)

Sec. 40-2.4 Exceptions.

- (a) City Police Department Authorized to Use All Devices. Notwithstanding the prohibitions prescribed in Section 40-2.3, the chief of police or the chief of police's subordinates may purchase, possess, discharge, use or transport shells, cartridges, bombs, guns or other devices emitting the obnoxious substances enumerated in Section 40-2.3 in carrying out their duties.
- (b) Private Security Agencies Authorized to Use Certain Devices. Notwithstanding the prohibitions prescribed in Section 40-2.3, specifically subsections (a) and (b) thereof, private security officers who are employees of private police or security agencies may purchase, possess, discharge, use or transport shells, cartridges, bombs, guns or other devices emitting the obnoxious substances enumerated in subsections (a) and (b) of Section 40-2.3 in carrying out their duties, subject to the conditions prescribed in Section 40-2.6.
- (c) Other Organizations Authorized to Use Device. Notwithstanding the prohibitions prescribed in Section 40-2.3 specifically relating to subsection (c) thereof, employees of government and private organizations who, by necessity of their employment, are required to go on private property to carry out their duties may possess, discharge, use or transport shells, cartridges, bombs, guns or other devices emitting the obnoxious substances enumerated in subsection (c) or animal repellents of Section 40-2.3, subject to the conditions prescribed in Section 40-2.6.
- (d) Pepper Sprays. The prohibitions of Section 40-2.3 shall not apply to the possession, use, transportation or other distribution of any pepper spray as defined under Section 41-37.1 in the city in a manner permitted under Chapter 41, Article 37.

(Sec. 13-16.4, R.O. 1978 (1983 Ed.); Am. Ord. 95-49)

Sec. 40-2.5 Permit to be obtained by agency.

- (a) Application. Any agency desiring to purchase, possess, discharge, use or transport obnoxious substances authorized herein shall first file an application on forms furnished by the chief of police for a permit.
- (b) Additional Requirements.
 - (1) The application shall include the name of the officer or employee who has been authorized to purchase said devices from vendors;
 - (2) Each agency is authorized to purchase only such devices emitting obnoxious substances as are listed on its permit.
- (c) The agency shall submit the names of its employees who are to possess, discharge, use or transport such devices together with its application for permit so that the chief of police may issue separate permits to the named employees submitted by the agency.
- (d) To defray the cost of processing the permit and to administer the provisions of this article, each agency authorized hereunder, except for government agencies and except in the case of agencies desiring to use the obnoxious substances enumerated in Section 40 2.3 (c), shall pay to the director of finance a sum of \$50.00 for its permit and a sum of five dollars for each permit issued to its employees.

(Sec. 13-16.5, R.O. 1978 (1983 Ed.))

Sec. 40-2.6 Conditions.

Government and private agencies described in subsections (b) and (c) in Section 40-2.4 shall be subject to the following conditions, relative to the purchase, use, storage, possession, transportation and other requirements in connection with obnoxious substances.

- (a) The chief of police, upon application by an agency, shall determine that the possession, discharge, use and transportation of said devices are necessary due to the nature of the services performed by the agency. The chief of police shall have the sole authority to designate the specific service or services for which there is a necessity for the use of such devices. The devices shall be used only in connection with the performance of the service or services designated.
- (b) After said determination and designation, the agency shall submit a list of names of employees whom the agency intends shall possess, discharge, use and transport the devices. The chief of police shall issue a permit to the individual employee upon finding that the employee:
 - (1) Is of good moral character;
 - (2) Is of the age of 20 years or more;
 - (3) Has not been convicted in this state or elsewhere of a crime of violence or of the illegal use, possession or sale of narcotics; and
 - (4) Has not been adjudged insane.
 The agency shall cooperate in providing all such evidence as to fitness of the employee as may be required by the chief of police in making the foregoing findings.
 The permit furnished by the chief of police shall be carried on the employee's person whenever the employee has in the employee's possession any of said devices.
- (c) Upon making the determination in subsections (a) and (b) of this section favorable to the requesting agency, the chief of police shall issue to said agency a permit authorizing it to purchase, own and control the specified device or devices capable of emitting obnoxious substances listed thereon which devices shall at all times remain subject to the exclusive ownership and control of the agency. A copy of all permits shall be retained on file at the Honolulu police department.
- (d) All devices emitting obnoxious substances owned by an agency except those enumerated in Section 40-2.3 (c), which may be secured in a locked compartment in the agency vehicle, shall be stored at a single location which is under the exclusive control of the agency and approved by the chief of police. The issuance and reissuance of said devices shall be only to employees authorized pursuant to subsection (b) of this section according to controls approved by the chief of police. In

addition, an accurate record of the issuance and turn in of all said devices as well as the number of such devices in the possession of each employee and the number in possession of the agency will be kept by the agency.

- (e) The possession and transportation of said devices by an employee shall be, unless otherwise provided, restricted to:
 - (1) Transportation between the place of storage and the place of performance of the approved service;
 - (2) The location where the services for which the use of such devices was approved and are being performed; and
 - (3) Transportation from one place of performance of an approved service to another, if during the course of the employee's duties the employee is required to provide services at more than one place.
- (f) The employee shall discharge or use said devices only in the scope of the employee's employment and only when reasonably necessary to perform the same.
- (g) The agency will be liable for the negligent use or misuse of all devices under its control whether or not such devices are being used by its employees within the scope of their employment; provided, however, that the penalty provision of Section 40-2.9 shall not apply to the agency for the unlawful acts of its employees unless the same are permitted or induced by the actions of the agency.
- (h) The records and procedures for the possession, use and transportation of such devices shall be subject to inspection by the chief of police from time to time.

(Sec. 13-16.6, R.O. 1978 (1983 Ed.))

Sec. 40-2.7 Vendor to obtain license.

- (a) Any person, corporation, partnership or association vending the obnoxious substances enumerated herein shall first obtain a license from the director of finance.
- (b) The vendor shall keep accurate records of the sale of said obnoxious substances including monthly inventories showing the quantity and type of devices received, inventories showing the quantity of devices on hand, accurate records of the sale of such devices including the name of the purchasing agency, date of purchase, type of obnoxious substances sold and the number of each type and such other records as the chief of police may require.
- (c) The chief of police shall have access to the vendor's books and records pertaining to the purchase and sale of obnoxious substances at reasonable times during business hours.
- (d) The sale of obnoxious substances shall be made in case sized units as packaged at the factory and unopened except that the unopened case may be placed in a container provided by the local vendor prior to the sale. Sales of such obnoxious substances shall be made only to the duly authorized representative of the purchasing agency as provided in Sections 40-2.5 (b)(1) and 40-2.6, or in the case of delivery to the said agency, such delivery shall be only to the location specified in the agency's permit. Deliveries as provided for herein shall be made only by the personnel of the vendor or the delivery service in both cases which are listed on the vendor's permit required by this section. No permit shall be required for the personnel or delivery service making such deliveries.
- (e) The annual fee for a license under this section shall be \$25.00, which shall be payable to the director of finance.

(Sec. 13-16.7, R.O. 1978 (1983 Ed.))

Sec. 40-2.8 Licenses -- Permits renewability.

All licenses and permits issued pursuant to this article shall be renewed every year on or before July 1st provided, however, that all licenses or permits issued prior to July 1, 1971, shall remain valid until July 1, 1972. (Sec. 13-16.8, R.O. 1978 (1983 Ed.))

Sec. 40-2.9 Violation -- Penalty.

Any person violating any provision of this article shall upon conviction be punished by a fine not exceeding \$1,000.00 or by imprisonment not exceeding one year or both; and upon such conviction, any license or permit issued to any person hereunder shall be revoked. (Sec. 13-16.9, R.O. 1978 (1983 Ed.))

Sec. 40-2.10 Severability.

If any section, subsection, sentence, clause, phrase or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions. (Sec. 13-16.10, R.O. 1978 (1983 Ed.))

Article 3. Watersheds -- Reservoirs

Sections:

- 40-3.1 Unlawful to trespass.**
- 40-3.2 Unlawful to damage reservoirs.**
- 40-3.3 Power to arrest.**
- 40-3.4 Violation -- Penalty.**

Sec. 40-3.1 Unlawful to trespass.

It is unlawful for any person to be upon or about any public property used as a water reservoir site or watershed for collecting waters for public consumption, or upon or about any waterhead, water-ditch intake or water springs used for any public water system, or upon or about any water, reservoir, waterhead, water-ditch intake or water springs, without a written permit from the manager of the board of water supply; provided, that this section shall not apply to any public highway running through said watersheds. (Sec. 13-21.1, R.O. 1978 (1983 Ed.))

Sec. 40-3.2 Unlawful to damage reservoirs.

It is unlawful for any person to damage, destroy or interfere, in any manner whatsoever, with the public water reservoirs, pipe lines leading thereto or therefrom, ditches leading thereto or therefrom, ditch-intakes or other works for the collecting and disposing of water in or for the public water systems of the city. (Sec. 13-21.2, R.O. 1978 (1983 Ed.))

Sec. 40-3.3 Power to arrest.

Any officer or employee of the board of water supply may enforce the provisions of Sections 40-3.1 and 40-3.2, by arresting or causing to be arrested offenders thereunder. (Sec. 13-21.3, R.O. 1978 (1983 Ed.))

Sec. 40-3.4 Violation Penalty.

Any person violating any provision of this article shall, upon conviction, be punished by a fine not less than \$10.00 nor more than \$600.00 or by imprisonment for not less than 10 days nor more than six months, or by both such fine and imprisonment. (Sec. 13-21.4, R.O. 1978 (1983 Ed.))

Article 4. Iceboxes and Refrigerators

Sections:

40-4.1 Prohibitions.

40-4.2 Violation -- Penalty.

40-4.3 Severability.

Sec. 40-4.1 Prohibitions.

- (a) It is unlawful for any person to abandon or discard in a place accessible to children, or to store, keep or permit to remain on any property under such person's control in a place accessible to children, any icebox or refrigerator which has an airtight door or lid, snaplock or other locking device which may not be released from within the icebox or refrigerator, without first removing said door or lid, snaplock or other locking device.
- (b) The provisions of subsection (a) of this section are not intended and shall not be construed to apply to:
- (1) Iceboxes or refrigerators kept within any building for the purposes of display, inventory or repair in the regular course of business; provided, that an attendant is in the building at all times when the building is not under lock and key;
 - (2) Iceboxes or refrigerators within the enclosed dwelling area of a home; or
 - (3) Iceboxes or refrigerators actually being used for the purpose of refrigeration.

(Sec. 13-22.1, R.O. 1978 (1983 Ed.))

Sec. 40-4.2 Violation -- Penalty.

- (a) Any person violating any of the provisions of Section 40 4.1 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$100.00, or by imprisonment not exceeding 30 days, or by both.
- (b) Each day that such violation continues shall constitute a separate offense and shall be punishable as such hereunder. (Sec. 13 22.2, R.O. 1978 (1983 Ed.))

Sec. 40-4.3 Severability.

If any provision or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision or portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this article. (Sec. 13-22.3, R.O. 1978 (1983 Ed.))

Article 5. The Sale to, Possession of or Use by Minors of Chemical Substances Containing Volatile Organic Solvents

Sections:

40-5.1 Definitions.

40-5.2 Use as an inhalant prohibited.

40-5.3 Possession or transfer for unlawful purpose prohibited.

40-5.4 Use by minors -- Regulated.

40-5.5 Record of sales required.

40-5.6 Violation -- Penalty.

Sec. 40-5.1 Definitions.

"Minor" means any person below the age of 18 years.

"Spray paint" means the same as that term is defined in Section 40-11.1.

"Toxic chemical substance" means any substance, not a "food" as defined in HRS Section 328-1(3), which substance includes in its composition volatile organic solvents including amyl acetate, trichlorethylene or acetone, or any other chemical substance, capable of producing upon inhalation any degree of intoxication. The term "toxic chemical substance" shall not, however, include any spray paint or wide-tipped marker regulated pursuant to Article 11. (Sec. 13-25.1, R.O. 1978 (1983 Ed.); Am. Ord. 95-46)

Sec. 40-5.2 Use as an inhalant prohibited.

No person shall use any toxic chemical substance or any spray paint as an inhalant at any time; provided, that this section shall not apply to any person using as an inhalant any such toxic chemical substance pursuant to the direction of a physician. (Sec. 13-25.2, R.O. 1978 (1983 Ed.); Am. Ord. 95-46)

Sec. 40-5.3 Possession or transfer for unlawful purpose prohibited.

No person shall for the purpose of violating or aiding another to violate any provision of this article, intentionally possess, buy, sell, transfer possession or receive possession of any toxic chemical substance. (Sec. 13-25.3, R.O. 1978 (1983 Ed.))

Sec. 40-5.4 Use by minors -- Regulated.

- (a) Except as provided in subsection (c) of this section and Section 40-5.5, no minor shall possess or buy any toxic chemical substance.
- (b) Except as provided in subsection (c) of this section and Section 40-5.5, no person shall sell, give, lend or transfer possession of any toxic chemical substance to a minor.
- (c) Provided, however, a person may sell, give, lend or transfer possession of a toxic chemical substance to a minor for model building or other lawful use where said minor has in the minor's possession and exhibits the written consent of the minor's parent or guardian.

(Sec. 13-25.4, R.O. 1978 (1983 Ed.))

Sec. 40-5.5 Record of sales required.

A person making a sale of toxic chemical substances to a minor who exhibits the written consent of the minor's parent or guardian shall record the name, address, sex, and age of the minor and the name and address of the consenting parent or guardian. All data required by this section shall be kept in a permanent type register available for inspection by the chief of police or the chief of police's authorized representative for a period of at least six months. (Sec. 13-25.5, R.O. 1978 (1983 Ed.))

Sec. 40-5.6 Violation Penalty.

Any person who violates any provision of this article shall, upon conviction, be punished by a fine not exceeding \$100.00 or by imprisonment not exceeding three months, or by both. (Sec. 13-25.6, R.O. 1978 (1983 Ed.))

Article 6. Aerial Advertising

Sections:

40-6.1 Prohibited -- Exceptions.

40-6.2 Violation -- Penalty.

Sec. 40-6.1 Prohibited -- Exceptions.

- (a) Except as allowed under subsection (b), no person shall use any type of aircraft or other self-propelled or buoyant airborne object to display in any manner or for any purpose whatsoever any sign or advertising device. For the purpose of this section, a "sign or advertising device" includes, but is not limited to, a poster, banner, writing, picture, painting, light, model, display, emblem, notice, illustration, insignia, symbol or any other form of advertising sign or device.
- (b) Exceptions.
 - (1) Subsection (a) shall not prohibit the display of an identifying mark, trade name, trade insignia, or trademark on the exterior of an aircraft or self-propelled or buoyant airborne object if the displayed item is under the ownership or registration of the aircraft's or airborne object's owner.
 - (2) Subsection (a) shall not prohibit the display of a sign or advertising device placed wholly and visible only within the interior of an aircraft or self-propelled or buoyant airborne object.
 - (3) Subsection (a) shall not apply to the display of a sign or advertising device when placed on or attached to any ground, building, or structure and subject to regulation under Chapter 21 or 41. Such a sign or advertising device shall be permitted, prohibited, or otherwise regulated as provided under the applicable chapter.

(Sec. 13-32.1, R.O. 1978 (1983 Ed.); Am. Ord. 96-33)

Sec. 40-6.2 Violation -- 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. (Sec. 13-32.2, R.O. 1978 (1983 Ed.))

Article 7. Use of Sound Amplifying Device in Public Buildings

Sections:

40-7.1 Definitions.

40-7.2 Prohibition.

40-7.3 Exceptions.

40-7.4 Violation -- Penalty.

Sec. 40-7.1 Definitions.

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

"Department head" means the head of a department of the executive branch of the City and County of Honolulu.

"Public building" means any building or structure owned or controlled by the City and County of Honolulu.

"Sound amplifying device" means and includes any instrument or device for the production or reproduction of music, spoken words or other sounds, or any loudspeaker or other sound amplifying device designed to enlarge the volume of sound produced by any instrument or by the human voice, which instrument or device is used or intended to be used for the purpose of advertising or calling attention to any article, thing or event, or for the purpose of addressing any person or group of persons or the public or of attracting the attention of any person or group of persons or the public. (Sec. 13-35.1, R.O. 1978 (1983 Ed.))

Sec. 40-7.2 Prohibition.

No person shall use any sound amplifying device in a public building at any time without the prior written approval of the department head or the department head's authorized subordinate who exercises jurisdiction over the specific public building in which the sound amplifying device is to be used. Such written approval shall be pursuant to a written request, on forms furnished by the department head, which shall be submitted to the department head within five working days before the date of the use of the sound devices. The department head shall respond to such request within five working days either approving or disapproving the request. Any person aggrieved by the action of the department head may appeal same to the council. (Sec. 13-35.2, R.O. 1978 (1983 Ed.))

Sec. 40-7.3 Exceptions.

The following shall be exceptions to Section 40-7.2:

- (a) The use of sound amplifying devices for any program to be held in a public building sponsored by the City and County of Honolulu.
- (b) Any sound device which is wired, built in or made a part of a public building which is used for any program authorized therein for which the public building has been specifically constructed or for which a specific type of program therein has been authorized by said department head.

(Sec. 13-35.3, R.O. 1978 (1983 Ed.))

Sec. 40-7.4 Violation -- Penalty.

- (a) Denial of Use of Public Building. Any person failing to obtain the prior written approval shall be denied the use of a sound device within a public building.
- (b) Ejection. Any person who has been denied the use of a public building because such person has failed to obtain prior written approval for the use of a sound device but actually and continually uses the sound device may be ejected from the public building by a police officer.
- (c) Fine. Any person violating any of the provisions of this article shall, upon conviction, be punished by a fine not exceeding \$50.00.

(Sec. 13-35.4, R.O. 1978 (1983 Ed.))

Article 8. Sale of Toilets and Urinals

Sections:

40-8.1 Sale of certain toilets and urinals prohibited.

40-8.2 Enforcement--Penalty.

Sec. 40-8.1 Sale of certain toilets and urinals prohibited.

After November 25, 1993, only toilets and urinals that conform to the requirements of the Plumbing Code shall be offered for sale for installation in the city. (Added by Ord. 93-73)

Sec. 40-8.2 Enforcement--Penalty.

- (a) The building superintendent shall enforce the provisions of this article and may adopt rules pursuant to HRS Chapter 91 for the administration and enforcement of this article.
- (b) Any person violating the provisions of this article shall be fined not less than \$100.00 and not more than \$250.00 for each violation.

(Added by Ord. 93-73)

Article 9. Sale of Showerheads and Faucets

Sections:

40-9.1 Sale of certain showerheads and faucets prohibited.

40-9.2 Enforcement--Penalty.

Sec. 40-9.1 Sale of certain showerheads and faucets prohibited.

Effective April 12, 1994, only showerheads and kitchen faucets that conform to the requirements of the Energy Policy Act of 1992, P.L. 102-486, and only lavatory faucets that conform to the requirements of the plumbing code shall be offered for sale in the city. (Added by Ord. 93-77)

Sec. 40-9.2 Enforcement--Penalty.

- (a) The building superintendent shall enforce the provisions of this article and may adopt rules pursuant to HRS Chapter 91 for the administration and enforcement of this article.
- (b) Any person violating the provisions of this article shall be fined not less than \$100.00 and not more than \$250.00 for each violation.

(Added by Ord. 93-77)

**(Article 10. Distribution of Tobacco Products and Tobacco Promotional Materials.
Repealed by Ord. 98-10)**

Article 10. Advertisement and Distribution of Cigarettes and Tobacco Products

Sections:

- 40-10.1 Definitions.**
- 40-10.2 Prohibition.**
- 40-10.3 Exceptions.**
- 40-10.4 Penalties.**

Sec. 40-10.1 Definitions.

As used in this article:

"Advertisement" means any poster, banner, sticker, emblem, placard, graphic illustration or sign, including any neon, electronically charged or portable freestanding sign, used to publicize a cigarette or tobacco product to the general public.

"Business" means any person or entity engaged in a retail operation that offers cigarettes or other tobacco products for sale to any member of the general public for consumption or use.

"Promotional activities" means the distribution of cigarette or other tobacco product samples or materials or coupons redeemable for cigarettes or other tobacco products free of charge or for a nominal charge to members of the general public for the purpose of promoting a brand of cigarettes or a form of tobacco products.

"Public property" includes any street, sidewalk, public or private park, public or private school ground and any other property that is owned or controlled by the federal, state or city government or any agency thereof.

"Publicly visible location" means a place inside or outside of a commercial building, including the exterior walls of the building and the exterior and interior of a display window of a retail business, that is visible to the general public from public property.

"School zone" means every street and all other property within 1,000 feet of the boundaries of any public or private primary or secondary school and any preschool licensed by the state department of human services.

"Street" means the same as defined in Section 29-1.1.

(Added by Ord. 98-10)

Sec. 40-10.2 Prohibition.

(a) It is unlawful for any business to display a cigarette or other tobacco product advertisement in a publicly visible location within a school zone.

(b) It is unlawful for any person to participate in any promotional activities, as defined in Section 40-10.1, on any public property or within a school zone; provided that such promotional activities shall not be prohibited inside any business establishment in which retail sales are made to the general public; and provided further that the promotional activities within any such business establishment shall not be seen from a publicly visible location.

(Added by Ord. 98-10)

Sec. 40-10.3 Exceptions.

The following shall be exceptions to Section 40-10.2(a):

(a) The placement of an advertisement for a cigarette or other tobacco product inside of a retail business establishment where the product is offered for sale to the general public, provided that the advertisement is not in a publicly visible location.

(b) The operation or legal parking of a vehicle within a school zone that has permanently painted on or affixed to the vehicle any sign, graphics or lettering relating to the name, trade insignia or trademark of a cigarette or other tobacco product, to the extent permitted in Section 41-14.3.

(c) The placement of any advertisement for a cigarette or other tobacco product in or upon a federal or state building or facility located within a school zone.

(Added by Ord. 98-10)

Sec. 40-10.4 Penalties.

Any person who violates any of the provisions of this article shall be fined not more than \$500.00. (Added by Ord. 98-10)

Article 11. Regulation of Distribution, Acquisition, Possession and Use of Graffiti Implements

Sections:

- 40-11.1 Definitions.**
- 40-11.2 Restrictions on sale and use.**
- 40-11.3 Violation--Penalty.**

Sec. 40-11.1 Definitions.

"Adult" means a natural person other than a minor.

"Glass cutter" means a metal tool or instrument equipped with a blade or a sharp edge to cut, score, or grind glass.

"Graffiti implement" means any of the following implements capable of marking or scarring or being used to mark or scar a glass, metal, concrete, wood, plastic, or other solid surface to create graffiti, as that term is defined in Section 40-12.1: spray paint, wide tipped markers, glass cutters, paint sticks, or spray actuators.

"Minor" means a natural person below the age of 18 years.

"Paint stick" means any device containing a solid form of paint capable of being applied to a surface by pressure, and upon application leaving a mark at least one-sixteenth of an inch in width.

"Person" means the same as defined in Section 41-25.1.

"Spray actuator" (also known as a "spray tip," "nozzle" or "button") means an object which is capable of being attached to an aerosol paint container for the purpose of spraying the substance contained therein.

"Spray paint" means paint contained in an aerosol container.

"Wide-tipped marker" means any marker, pen, or similar implement which contains a fluid which cannot be removed with water after it dries and which has a tip, point, brush, applicator or other writing surface which, at its broadest, is one-fourth inch or greater in width.

(Added by Ord. 95-46; Am. Ord. 97-67)

Sec. 40-11.2 Restrictions on sale and use.

- (a) It is unlawful for any person to sell, give away, or in any way furnish any graffiti implement to any minor; provided that any graffiti implement may be sold, given away or furnished to a minor by an adult parent, legal guardian, employer, or teacher of the minor, or another adult authorized by a parent or legal guardian to supervise the minor.
- (b) It is unlawful for a minor to purchase or otherwise acquire any graffiti implement; provided that the acquisition, whether by purchase or other means, of any graffiti implement shall not be prohibited when it is acquired from an adult parent, legal guardian, employer, or teacher of the minor, or by another adult authorized by a parent or legal guardian to supervise the minor.
- (c) It is unlawful for a minor to possess, have under the minor's control or use any graffiti implement while on public or private property without the express permission of the owner, lessee or manager of the property; provided that a minor may possess, have under the minor's control or use any graffiti implement in the immediate presence and under the supervision of an adult parent, legal guardian, employer, or teacher of the minor or of another adult authorized by a parent or legal guardian to supervise the minor.

(Added by Ord. 95-46; Am. Ord. 97-67)

Sec. 40-11.3 Violation--Penalty.

Notwithstanding the civil penalties of Section 40-12.2 for violations of the prohibitions against placing graffiti on public property, any person convicted of violating any provision of Section 40-11.2 shall be punished for each violation by a fine of not less than \$500.00 nor more than \$2,000.00, by imprisonment for not more than 30 days, or by both, without possibility of probation or suspension of sentence. Each sale, gift or furnishing of a group of graffiti implements to a minor in a single transaction shall constitute a single violation of Section 40-11.2. Each purchase or acquisition by other means of a group of graffiti implements in a single transaction by a minor shall constitute a single violation of Section 40-11.2. (Added by Ord. 95-46; Am. Ord. 97-67, 05-036)

Article 12. Graffiti Damage to Public Property

Sections:

- 40-12.1 Definitions.**
- 40-12.2 Violation--Penalty--Liability of parent or guardian.**
- 40-12.3 Enforcement.**
- 40-12.4 Rules.**
- 40-12.5 Collection of unpaid civil fines by addition to taxes, fees, and charges--Rules.**

Sec. 40-12.1 Definitions.

For the purposes of this article:

"Director" means the director and building superintendent of the city, with respect to public property under the management of the city.

"Graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances.

"Public property" means any real or personal property owned, managed, or maintained by the city.

(Added by Ord. 96-12; Am. Ord. 97-02)

Sec. 40-12.2 Violation--Penalty--Liability of parent or guardian.

- (a) Any person who places graffiti on public property shall be deemed to have committed a civil violation and shall be subject to the following:
 - (1) When the cost of repairing, cleaning or replacing the damaged property is \$250.00 or less, a civil fine of not less than \$250.00 and not more than \$1,000.00;
 - (2) When the cost of repairing, cleaning or replacing the damaged property is more than \$250.00, a civil fine of not less than the cost of repairing, cleaning or replacing the damaged property and not more than \$1,000.00; or
 - (3) When the cost of repairing, cleaning or replacing the damaged property is \$1,000.00 or more, a civil fine equal to the cost of repairing, cleaning or replacing the damaged property.
- (b) Any parent or guardian having custody of a minor who violates subsection (a) shall be jointly and severally liable with the minor for any civil fine imposed under this article.

(Added by Ord. 96-12)

Sec. 40-12.3 Enforcement.

- (a) Issuance of Notice of Violation and Order. If the director determines that any person has violated Section 40-12.2, the director may have the person served, by registered or certified mail, delivery, or publication in a daily newspaper of general circulation in the city, with a written notice of violation and order. If a minor has committed the violation, the director also shall serve the parent(s) or guardian(s) having custody of the minor.
- (1) Contents of the Notice of Violation. The notice shall include at least the following information:
- (A) Date of the notice;
 - (B) The name and address of the person given notice;
 - (C) The section number of the ordinance which has been violated;
 - (D) The nature of the violation; and
 - (E) The location of the violation and the date that the violation was discovered.
- (2) Contents of the Order. The order shall require the person to pay a civil fine in a stated amount, determined by the director in accordance with Section 40-12.2(a), in the manner, at the place, and before the date specified in the order. The order shall advise the person that the order shall become final 30 days after the date of its mailing, delivery, or publication unless written request for a hearing is mailed or delivered to the director within said 30 days. The order shall further advise that any parent or guardian having custody of a minor who has committed the violation is jointly and severally liable for the fine.
- (b) Effect of Order--Right to Hearing. The provisions of the order issued by the director under this section shall become final 30 days after the date of mailing, delivery, or publication of the order unless within those 30 days the person subject to the order requests in writing a hearing before the director. The request for a hearing shall be considered timely if the written request is delivered or mailed and postmark dated to the director within said 30 days. Upon receipt of the written request for a hearing, the director 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 director or the director's designee in accordance with the provisions of HRS Chapter 91. Following said hearing, the director may affirm, modify, or rescind the order as in the opinion of the director may be appropriate.
- (c) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any civil fine imposed by order issued pursuant to this section. Where such civil action has been instituted, the director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.
- (d) Nonexclusiveness of Remedies. The remedies provided in this article for enforcement of the provisions of this article, or any rule adopted hereunder, shall be in addition to any other remedy as may be provided by law.
- (e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, 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. 96-12)

Sec. 40-12.4 Rules.

The director is authorized to adopt rules in accordance with HRS Chapter 91 that the director may deem necessary for the implementation, administration, and enforcement of this article. (Added by Ord. 96-12)

Sec. 40-12.5 Collection of unpaid civil fines by addition to taxes, fees, and charges--Rules.

The director and the director of the department of finance may adopt rules in accordance with HRS Chapter 91 to enable the director and the director of the department of finance to administratively add, pursuant to Chapter 1, Article 19, any unpaid civil fines imposed under this article to taxes, fees, or charges collected by the city. The adoption of any of the foregoing rules shall not be a prerequisite to liability under Section 40-12.2. (Added by Ord. 96-12)

Article 13. Ephedrine-Containing Products

Sections:

- 40-13.1 Definitions.**
- 40-13.2 Restrictions on possession, sale, purchase, distribution, and labeling.**
- 40-13.3 Violation--Penalties.**

Sec. 40-13.1 Definitions.

- "Acupuncture practitioner" means a person licensed to practice acupuncture under HRS Chapter 436E.
- "Dentist" means a person licensed to practice dentistry under HRS Chapter 448.
- "Dietary supplement" and "drug" mean, respectively, a dietary supplement and drug as defined in 21 U.S.C. Section 321.
- "Distribution" shall include any gift, donation, trade or barter.
- "Ephedrine" means ephedrine and any natural, botanical or synthetic form of ephedrine including, but not limited to, ephedra, ephedra sinica, ma huang and ephedron, or any extract thereof.
- "FDA" means the United States Food and Drug Administration.
- "Herbalist" means an individual who personally engages in the preparation and distribution of an herbal product for a medicinal or nutritional purpose.
- "Medical physician" means a person licensed to practice medicine or surgery under HRS Chapter 453.
- "Naturopathic physician" means a person licensed to practice naturopathy under HRS Chapter 455.
- "Osteopathic physician" means a person licensed to practice osteopathic medicine and surgery under HRS Chapter 460.
- "Person" means an individual, firm, partnership, corporation, association or other entity.
- "Podiatrist" means a person licensed to practice podiatric medicine under HRS Chapter 463E.

(Added by Ord. 96-59)

Sec. 40-13.2 Restrictions on possession, sale, purchase, distribution, and labeling.

- (a) Except as provided in subsection (b), no person shall possess, sell or cause to be sold any product containing ephedrine.
- (b) The following ephedrine-containing products may be lawfully possessed, sold or caused to be sold:
 - (1) A drug approved for sale by the FDA;
 - (2) An over-the-counter drug in compliance with a proposed monograph, tentative final monograph or final monograph issued by the FDA;
 - (3) A dietary supplement which is not deemed adulterated or misbranded by the FDA and which is:
 - (A) Intended and labeled for use as a weight loss aid or sports nutrition product; and
 - (B) Labeled for sale only to, and for use only by, persons 21 years of age or older;and
 - (4) A fresh, dried, or ground stem, leaf, root, or other part of a plant of the genus ephedra.
- (c) Notwithstanding subsection (b), no person shall sell or cause to be sold any ephedrine-containing product to any person under 21 years of age, except:
 - (1) Pursuant to a written prescription from a medical physician, osteopathic physician, podiatrist, or dentist or the written approval of an acupuncture practitioner or naturopathic physician; or
 - (2) An herbalist may personally sell the fresh, dried, or ground stem, leaf, root, or other part of a plant of the genus ephedra to a person under 21 years of age.
- (d) No person shall possess, sell or cause to be sold, purchase for resale or cause to be purchased for resale, distribute or cause to be distributed any ephedrine-containing product with a label that claims or implies that consumption of the product will produce effects such as ecstasy, euphoria, increased sexual sensations, heightened awareness, increased energy, legal "highs" and other similar effects.

(Added by Ord. 96-59)

Sec. 40-13.3 Violation--Penalties

Any person convicted of violating any provision of Section 40-13.2 shall be punished for each violation by a fine of not less than \$500.00 nor more than \$1,000.00, by imprisonment for not more than 90 days, or by both. Possession of one or more tablets, bottles, or other units of any product containing ephedrine in violation of Section 40-13.2(a) or (d) at one time shall constitute a single violation. If any person takes possession, sells or causes to be sold, purchases for resale or causes to be purchased for resale, distributes or causes to be distributed more than one tablet, bottle or other unit of any product containing ephedrine in a single transaction, the person shall be deemed to have committed a single violation of Section 40-13.2(a), (c) or (d), whichever provision is applicable. If any person violates more than one subsection of Section 40-13.2 in a single transaction, the person shall be deemed to have committed a single violation. (Added by Ord. 96-59)

Article 14. Products Containing Gamma Hydroxybutyrate

Sections:

- 40-14.1 Definitions.**
- 40-14.2 Restrictions relating to gamma hydroxybutyrate.**
- 40-14.3 Violation--Penalties.**

Sec. 40-14.1 Definitions.

"Drug" means a drug as defined in 21 U.S.C. Section 321.

"Distribution" shall include any gift, donation, trade or barter.

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

(Added by Ord. 97-01)

Sec. 40-14.2 Restrictions relating to gamma hydroxybutyrate.

No person shall manufacture, possess, distribute, sell, or cause to be sold or distributed any product containing gamma hydroxybutyrate. (Added by Ord. 97-01)

Sec. 40-14.3 Violation--Penalties.

Any person convicted of violating any provision of Section 40-14.2 shall be punished for each violation by a fine of not less than \$500.00 nor more than \$1,000.00, by imprisonment for not more than 90 days, or by both. Possession of one or more tablets, bottles, or other units of any product containing gamma hydroxybutyrate in violation of Section 40-14.2 at one time shall constitute a single violation. If any person sells or causes to be sold, or distributes or causes to be distributed, more than one tablet, bottle or other unit of any product containing gamma hydroxybutyrate in a single transaction, the person shall be deemed to have committed a single violation of Section 40-14.2. (Added by Ord. 97-01; Am. Ord. 97-57)

Article 15. Laser Pointers and Harassment with Laser Beams

Sections:

- 40-15.1 Definitions.**
- 40-15.2 Possession and providing of laser pointers prohibited.**
- 40-15.3 Harassment by laser beams prohibited.**

40-15.4 Violation--Penalties--Liability of parent.

Sec. 40-15.1 Definitions.

"Laser pointer" means any handheld laser which is not designed as a sighting device for a weapon, and which is not designed for use in a medical procedure. This term includes the product commonly referred to as a "laser pen." (Added by Ord. 99-09)

Sec. 40-15.2 Possession and providing of laser pointers prohibited.

- (a) No person shall sell, give, loan or otherwise provide or cause to be provided a laser pointer to any person under 18 years of age.
- (b) No person under 18 years of age shall possess a laser pointer.
- (c) The prohibitions in subsections (a) and (b) shall not apply to any handheld laser devices used in a recreational activity commonly referred to as "laser tag," and which activity is offered for a fee or charge by an outdoor amusement facility, an indoor amusement and recreation facility or by an outdoor recreation facility, as these recreation and amusement facilities are defined in Section 21-10.1; provided that the devices shall be collected by the owner or operator of the facility following their use in the recreational activity.

(Added by Ord. 99-09)

Sec. 40-15.3 Harassment by laser beams prohibited.

No person shall intentionally focus, point or shine any laser beam directly or indirectly into the eye or eyes of another person, or on another person or animal, in such a manner as would reasonably be expected to annoy, harass or alarm the person or animal. (Added by Ord. 99-09)

Sec. 40-15.4 Violation--Penalties--Liability of parent.

- (a) Any person convicted of violating any provision of this article shall be punished for each violation by a fine of not less than \$100.00 nor more than \$500.00, by imprisonment for not more than 30 days, or both.
- (b) Any father or mother of an unmarried minor who violates Section 40-15.3 shall be jointly and severally liable with the minor for any injury or damage suffered as a result of such violation.

(Added by Ord. 99-09)

Article 16. Prostitution-Related Public Nuisance Abatement

Sections:

40-16.1 Definitions.

40-16.2 "Public nuisance" declaration for prostitution-related offenses.

40-16.3 Abatement.

40-16.4 Other actions not prohibited.

Sec. 40-16.1 Definitions.

For the purpose of this article:

"Business" means a corporation, partnership, or sole proprietorship.

"County organization" means a city agency with authority under the charter to bring suit to enjoin, abate, and prevent a nuisance under HRS Chapter 712, Part V.

"Premises of a business" means the portion of a structure, grounds, or both, which is occupied by a business through ownership, lease, rental, or other conveyance. The term does not include common areas shared by the business with other parties.

"Principal" means an officer, director, shareholder, partner, or sole proprietor of a business.

"Prostitution" and "promoting prostitution" mean the offenses of prostitution and promoting prostitution under HRS Chapter 712.

"Prostitution-related public nuisance" means the public nuisance declared under Section 40-16.2.

(Added by Ord. 99-53)

Sec. 40-16-2 "Public nuisance" declaration for prostitution-related offenses.

- (a) The premises of a business, to which all of the following conditions apply, is declared a public nuisance per se:
 - (1) At least three arrests of a principal, employee, or independent contractor of the business were made within a five-year period for alleged prostitution or promoting prostitution;
 - (2) Each person arrested was charged with prostitution or promoting prostitution for an act which allegedly occurred on the premises;
 - (3) At least three of the persons charged were:
 - (A) Convicted of; or
 - (B) Had the court defer acceptance of a guilty or nolo contendere plea for; the prostitution or promoting prostitution offense for which charged; and
 - (4) The same business occupied the premises continuously from the first arrest counted under subdivision (1) until the third conviction or court deferred acceptance of guilty or nolo contendere plea counted under subdivision (3). For the purpose of this subdivision, a business shall be deemed the "same" so long as controlling ownership interest in the business remained held or shared by the same person, even if changes occurred in the name of the business, purpose of the business, proportion of controlling ownership interest held by the person, members of

the controlling ownership group, if any, of the business, or any other factor which did not affect the person's holding or sharing of controlling ownership interest.

- (b) The existence of the following conditions shall not be necessary for the premises of a business to become a public nuisance under subsection (a):
- (1) Knowledge of any principal of the business that prostitution or promoting prostitution was committed on the premises by another principal, an employee, or an independent contractor of the business;
 - (2) Orders by any principal of the business requiring another principal, an employee, or an independent contractor of the business to commit prostitution or promoting prostitution on the premises; or
 - (3) Acquiescence by any principal of the business to the prostitution or promoting prostitution committed on the premises by another principal, an employee, or an independent contractor of the business.

(Added by Ord. 99-53)

Sec. 40-16.3 Abatement.

- (a) This article shall not affect the authority of the prosecuting attorney or a county organization under HRS Chapter 712, Part V, to bring a suit to enjoin, abate, and prevent a prostitution-related public nuisance. If, however, the prosecuting attorney or a county organization does not bring such a suit within 30 days of the date the premises of a business becomes a prostitution-related public nuisance, the department of the corporation counsel shall take action in accordance with subsection (b). The "date the premises of the business becomes a prostitution-related public nuisance" means the date of the third conviction or court deferred acceptance of guilty or nolo contendere plea counted under subdivision (3) for prostitution or promoting prostitution necessary to make the premises a public nuisance under Section 40-16.2.

- (b) When required to take action pursuant to subsection (a), the department of the corporation counsel shall either:
- (1) Seek to enjoin, abate, and prevent the prostitution-related public nuisance by suit brought as a county organization pursuant to HRS Chapter 712, Part V; or
 - (2) Seek to enjoin and prohibit the prostitution-related public nuisance under HRS Section 603-23. Within 60 days of the day this subsection becomes applicable, the department of the corporation counsel shall initiate the necessary action for an injunction to immediately close the prostitution-related public nuisance for up to one year. The "day this subsection becomes applicable" means the 31st day following the date the premises of the applicable business becomes a prostitution-related public nuisance. It shall not be a defense to an action brought by the corporation counsel that the action was initiated on the sixtieth day after this subsection becomes available, or thereafter. When the department of the corporation counsel brings an action under HRS Chapter 712, Part V, or HRS Section 603-23 against a prostitution-related public nuisance, the proceedings, including proof required, and remedies shall be subject to that part or section, as applicable.

(Added by Ord. 99-53)

Sec. 40-16.4 Other actions not prohibited.

- (a) This article shall not affect the right of a private person under statutory or common law to bring an action to abate or collect damages for a nuisance declared under this article.
- (b) This article shall not prohibit the prosecuting attorney or any county organization from bringing suit under HRS Chapter 712, Part V, to close the premises of a business before the occurrence of three convictions or court deferred acceptances of guilty or nolo contendere plea counted under subdivision (3) for prostitution or promoting prostitution on the premises.
- (c) This article shall not impose any liability on the city for a failure to seek the abatement of a public nuisance declared under this article.

(Added by Ord. 99-53)

Article 17. Unofficial Age Identification Card

Sections:

40-17.1 Definitions.

40-17.2 Prohibition on manufacture, sale, or supply of unofficial age identification card without required disclaimer.

40-17.3 Prohibition on use of unofficial age identification card with false birth date.

Sec. 40-17.1 Definitions.

For the purpose of this article:

"Government agency" means an agency of the United States government, an agency of any state government of the United States, or an agency of any political subdivision of a state. "Government agency" also means an agency of any government of a country besides the United States.

"Government document" means a document issued by a government agency.

"Supply," with respect to an unofficial age identification card, means to provide or furnish to a person by other than a sales transaction.

"Unofficial age identification card" means a card which:

- (1) Is manufactured by a private person without the express, specific authorization of a government agency;
- (2) Is rectangular and not more than eight inches in length and not more than five inches in width; and
- (3) Is imprinted, inscribed, or stamped on at least one side with at least the following information:
 - (A) A picture of an individual;
 - (B) A personal name positioned or described in a manner indicating or resulting in a reasonable assumption that it is the personal name of the pictured individual; and

- (C) A date represented as a "birth date" and positioned or described in a manner indicating or resulting in a reasonable assumption that the date is the birth date of the pictured individual. A date shall be deemed represented as a "birth date" if designated or accompanied by the words "birth date" or "date of birth," the initials "DOB" or "BD," or other similar words or initials in the English or another language.

(Added by Ord. 99-66)

Sec. 40-17.2 Prohibition on manufacture, sale, or supply of unofficial age identification card without required disclaimer.

- (a) Except as provided in this section, a private person shall not manufacture, sell, supply, or attempt to sell or supply an unofficial age identification card unless the following words are imprinted, inscribed, or stamped across the top of each side of the card in the manner required by this subsection: "SOUVENIR ONLY." The words shall be in red capital letters at least 1/4 inch high and printed prominently, legibly and conspicuously in permanent ink. The phrase "SOUVENIR ONLY" shall be at least two inches wide or, if the card is less than two inches wide, shall be at least 80 percent of the width of the card.
- (b) Subsection (a) shall not apply to a private person who manufactures, sells, supplies, or attempts to sell or supply the following:
- (1) A "credit card" as defined in HRS Section 708-800;
 - (2) An "employee identification card," meaning a card given to an individual by a private employer for the purpose of identifying the individual as an employee of the employer;
 - (3) A "school identification card," meaning a card given to an individual by a private academic, trade, vocational, or technical school, college, or university for the purpose of identifying the individual as a student of the school, college, or university; or
 - (4) A card which does not meet all criteria of the definition of "unofficial age identification card" under Section 40-17.1. A card excepted by this subdivision includes a card which is manufactured, sold, or supplied by a private person with the express, specific authorization of a government agency, a card which does not comply with the dimensional requirements of subdivision (2) of the definition, or a card which does not include on at least one side all of the information specified under subdivision (3) of the definition.
- A card described under this subsection need not include the words required by subsection (a).
- (c) A person who manufactures, sells, supplies, or attempts to sell or supply an unofficial age identification card in violation of this section shall be subject for each violation to a maximum \$2,000.00 fine, maximum one-year imprisonment, or both. Each card manufactured, sold, supplied, or attempted to be sold or supplied in violation of the section shall be deemed a separate violation.

(Added by Ord. 99-66)

Sec. 40-17.3 Prohibition on use of unofficial age identification card with false birth date.

- (a) A person shall not use or attempt to use an unofficial age identification card with a false birth date as proof of being the requisite age to:
- (1) Enter a liquor-serving or other establishment restricted to patrons of a minimum age; or
 - (2) Purchase liquor or another product purchasable only by persons of a minimum age.
- An "unofficial age identification card with a false birth date" means an unofficial age identification card, the birth date on which is not that of the person who uses or attempts to use the card.
- The prohibition of this subsection applies even if the unofficial age identification card includes the disclaimer required under Section 40-17.2.
- (b) Subsection (a) shall not apply when the use of a particular unofficial age identification card with a false birth date also constitutes a violation of a state law prohibiting the use of a fraudulent government document. By this subsection, the council intends to avoid a conflict with the state law.
- (c) A person who violates this section shall be subject for each violation to a maximum \$2,000.00 fine; provided that, if the person is subject to the jurisdiction of the family court pursuant to HRS Section 571-11(1), the punishment shall be established by that court.

(Added by Ord. 99-66)

Article 18. Bidi Cigarette Prohibitions

Sections:

- 40-18.1 Definitions.**
- 40-18.2 Prohibition.**
- 40-18.3 Violation--Penalties.**

Sec. 40-18.1 Definitions.

"Bidi cigarette" means a product that contains tobacco that is wrapped in temburni or tendu leaf. (Added by Ord. 00-23)

Sec. 40-18.2 Prohibition.

No person shall sell, give or barter away, or in any way furnish to any other person a bidi cigarette. (Added by Ord. 00-23)

Sec. 40-18.3 Violation--Penalties.

Any person who violates Section 40-18.2 shall be fined not more than \$500.00 for the first offense. Any subsequent offenses shall subject the person to a fine of not less than \$500.00 nor more than \$1,000.00.

A police officer may arrest an alleged violator of this article or may issue a citation in lieu of arrest as provided in HRS Section 803-6.
(Added by Ord. 00-23)

Article 19. Advertisement of Intoxicating Liquor and Liquor Products

Sections:

- 40-19.1 Definitions.**
- 40-19.2 Prohibition.**
- 40-19.3 Exceptions.**
- 40-19.4 Citation--Penalties.**

Sec. 40-19.1 Definitions.

As used in this article:

"Advertisement" means any poster, banner, sticker, emblem, placard, graphic illustration or sign, including any neon, electronically charged or portable freestanding sign, used to publicize any intoxicating liquor or liquor product to the general public or promote the sale of any intoxicating liquor or liquor product to the general public.

"Business" means any person or entity engaged in a retail operation that offers liquor or any liquor product for sale to any member of the general public for consumption or use.

"Enforcement officer" means any officer of the Honolulu police department or deputized by the Honolulu police department to enforce this article.

"Intoxicating liquor" means the same as "liquor."

"Liquor" means the same as defined in HRS Section 281-1, but does not include those articles excepted under Section 281-2, HRS.

"Liquor product" means a food product, including a confection, that contains alcohol in excess of five percent by weight.

"Public property" includes any street, sidewalk, public mall, any public or private park, any public or private school ground and any property that is owned or controlled by the federal, state or city government or any agency thereof.

"Publicly visible location" means a place inside or outside of a commercial building, including the exterior walls of the building and the exterior and interior of a display window of the building, that is visible to the general public from public property.

"School zone" means every street and all other property within 500 feet of the boundaries of any public or private primary or secondary school and any preschool licensed by the state department of human services.

"Street" means the same as defined in Section 29-1.1.

(Added by Ord. 00-50)

Sec. 40-19.2 Prohibition.

Except as provided in Section 40-19.3, it is unlawful for any person to display a liquor or liquor product advertisement in a publicly visible location within a school zone. (Added by Ord. 00-50)

Sec. 40-19.3 Exceptions.

The following shall be exceptions to Section 40-19.2:

- (a) The placement of an advertisement for liquor or a liquor product inside of a retail business establishment where the product is offered for sale to the general public, provided that the advertisement is not in a publicly visible location.
- (b) The operation or legal parking within a school zone of a vehicle that has permanently painted on or affixed to the vehicle any sign, graphics or lettering relating to the name, trade insignia or trademark of a liquor or liquor product, to the extent permitted in Section 41-14.3.
- (c) The placement of any advertisement for liquor or liquor product in or upon a federal or state building or facility located within a school zone.
- (d) The placement of any advertisement in or on the premises of a licensed liquor establishment to the extent expressly permitted pursuant to duly adopted rules of the liquor commission or expressly stated under a license issued by the liquor commission.
- (e) The placement of any material in a newspaper or magazine of general circulation.

(Added by Ord. 00-50; Am. Ord. 01-08)

Sec. 40-19.4 Citation--Penalties.

- (a) Upon finding probable cause to believe that there has been a violation of this article, an enforcement officer may either arrest the person believed to be in violation or may issue to that person a summons and citation for the violation. The citation shall be consistent with the requirements of HRS Section 803-6(b).
- (b) Any person who violates this article shall be fined not more than \$500. Following a person's conviction of a violation of this article, each day an advertisement is displayed in violation of this article shall be deemed a separate violation.

(Added by Ord. 00-50)

Article 20. Herbal Cigarettes

Sections:

- 40-20.1 Definitions.**

Article 22. Wearing of Masks or Disguises

Sections:

40-22.1 Definitions.

40-22.2 Wearing of masks or disguises prohibited.

40-22.3 Penalty.

Sec. 40-22.1 Definitions.

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

"Mask" means any item that, when used, covers or conceals a person's facial features.

"False whiskers" means all items that, when used, create the impression of facial hair features that include beards, moustaches, and sideburns.

"Disguise" means all items that may be worn to alter the physical appearance of the wearer.

(Added by Ord. 01-19)

Sec. 40-22.2 Wearing of masks or disguises prohibited.

No person shall wear any mask, false whiskers or any personal disguise (whether complete or partial) for the purpose of:

- (a) Evading or escaping discovery, recognition, or identification in the commission of any criminal offense; or
- (b) Concealment, flight, or escape, when the person has been charged with, arrested for, or convicted of, any criminal offense.

(Added by Ord. 01-19)

Sec. 40-22.3 Penalty.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and shall be subject to a fine of up to \$1,000, up to 30 days of imprisonment, or both.

(Added by Ord. 01-19)

Article 23. Replica Guns

Sections:

40-23.1 Definitions.

40-23.2 Prohibitions.

40-23.3 Violation—Penalty.

Sec. 40-23.1 Definitions.

"Firearm" shall mean the same as it is defined in HRS Section 134-1.

"Law enforcement officer" shall mean any public servant, whether employed by the state, the city or the United States, vested by law with a duty to maintain public order or to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

"Replica gun" shall mean any toy or other object which bears such a resemblance to an actual firearm that a reasonable person would have difficulty visually distinguishing it from an actual firearm, and which lacks any feature or aspect which would serve as a signal to allow a person to readily distinguish the replica gun from an actual firearm by sight. The term shall not include an actual firearm.

(Added by Ord. 03-24)

Sec. 40-23.2 Prohibitions.

- (a) No person shall carry or display a replica gun on any street, alley, public road, or on any public lands unless such replica gun is in a suitable case or securely wrapped.
- (b) No person shall draw or brandish a replica gun in the presence of a law enforcement officer engaged in the performance of his or her duties.
- (c) 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) In the event a replica gun is also an "air gun," as defined in Section 41-8.1, the exceptions in Section 41-8.4 shall also be exceptions to the prohibitions in this article.
- (e) Nothing in this article shall prevent carrying or display of a replica gun 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.

(Added by Ord. 03-24; Am. Ord. 03-35)

Sec. 40-23.3 Violation—Penalty.

Any person violating the provisions of Section 40-23.2(a) shall be deemed guilty of a petty misdemeanor and upon conviction shall be punished by a fine not exceeding \$500, or by imprisonment not exceeding 30 days.

Any person violating the provisions of Section 40-23.2(b) shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year.

(Added by Ord. 03-24)

Article 24. Urinating or Defecating in Public Prohibited in the Waikiki Special District

- 40-24.1 Definitions.**
- 40-24.2 Prohibition.**
- 40-24.3 Exceptions.**
- 40-24.4 Violation-Penalty.**

Sec. 40-24.1 Definitions.

For the purposes of this article:

“Waikiki special district” means the Waikiki special district as defined in Section 21-9.80-2.

“Public place” means any publicly-owned or privately-owned property open for public use or to which the public is invited for entertainment or business purposes and includes but is not limited to any street, sidewalk, driveway, alley, doorway, mall, plaza, park, public building, or parking lot.

(Added by Ord. 14-27)

Sec. 40-24.2 Prohibition.

Within the boundaries of the Waikiki special district, no person shall intentionally or knowingly urinate or defecate (a) in a public place, or (b) in any area where such an act is likely to be observed by any member of the public.

(Added by Ord. 14-27)

Sec. 40-24.3 Exceptions.

- (a) This article shall not apply in cases where the person failed to use a restroom or other toilet facility because of a medical condition verified by a licensed physician.
- (b) This article shall not apply to a person urinating or defecating while using appropriate fixtures in any restroom or other toilet facility designed for the sanitary disposal of human waste.

(Added by Ord. 14-27)

Sec. 40-24.4 Violation-Penalty.

Any person violating any provision of this article shall, upon conviction, be guilty of a petty misdemeanor and subject to punishment in accordance with HRS, Sections 706-640 and 706-663, as amended.

(Added by Ord. 14-27)

Article 24A. Urinating or Defecating in Public Prohibited Outside of the Waikiki Special District

- 40-24A.1 Definitions.**
- 40-24A.2 Prohibition.**
- 40-24A.3 Exceptions.**
- 40-24A.4 Violation-Penalty.**

Sec. 40-24A.1 Definitions.

For the purposes of this article:

“Public place” means any publicly-owned or privately-owned property open for public use or to which the public is invited for entertainment or business purposes and includes but is not limited to any street, sidewalk, driveway, alley, doorway, mall, plaza, park, public building, or parking lot.

(Added by Ord. 14-28)

Sec. 40-24A.2 Prohibition.

No person shall intentionally or knowingly urinate or defecate (a) in a public place, or (b) in any area where such an act is likely to be observed by any member of the public.

(Added by Ord. 14-28)

Sec. 40-24A.3 Exceptions.

- (a) This article shall not apply in cases where the person failed to use a restroom or other toilet facility because of a medical condition verified by a licensed physician.
- (b) This article shall not apply to a person urinating or defecating while using appropriate fixtures in any restroom or other toilet facility designed for the sanitary disposal of human waste.
- (c) This article shall not apply to any area where urination or defecation is prohibited by state law or by a separate ordinance statement.

(Added by Ord. 14-28)

Sec. 40-24A.4 Violation-Penalty.

Any person violating any provision of this article shall, upon conviction, be guilty of a petty misdemeanor and subject to punishment in accordance with HRS, Sections 706-640 and 706-663, as amended.

(Added by Ord. 14-28)