

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

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### 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 public works, 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)

### Sec. 41-26.2 Definitions.

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

“City” means the City and County of Honolulu.

“Department” means the government unit known as the department of public works 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)

**Sec. 41-26.3 Maintenance of streams.**

The owner of any stream has the duty to maintain, dredge and clear such stream 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.  
(Added by Ord. 89-59)

**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)

**Article 27. Polystyrene Foam Containers**

**Sections:**

- 41-27.1 Definitions.**
- 41-27.2 Ban on use of polystyrene foam containers.**
- 41-27.3 Exemptions.**
- 41-27.4 Violation—Penalty.**
- 41-27.5 Enforcement.**
- 41-27.6 Rules.**

**Sec. 41-27.1 Definitions.**

For the purposes of this article:

“Biodegradable” means material capable of being broken down by microorganisms into simple substances or basic elements.

“Chlorofluorocarbons” or “CFCs” mean the family of substances containing carbon, fluorine and chlorine. The term includes the following compounds: CFC-11, CFC-12, CFC-113, CFC-114 and CFC-115.

“Customer” means any person purchasing food or beverages from a food vendor.

“Department” means the department of public works.

“Food packager” means any person, located within the City and County of Honolulu, who places meat, eggs, bakery products or other food in packaging materials for the purpose of retail sale of those products.

“Food vendor” means any restaurant, retail food vendor or nonprofit food provider.

“Nonprofit food provider” means a nonprofit corporation exempt from federal income taxation which provides prepared food as part of its services.

“Prepared food” means food or beverages which are:

- (1) Served on the food vendor’s premises without preparation; or
- (2) Prepared on the food vendor’s premises by cooking, chopping, slicing, mixing, brewing, freezing or squeezing.

“Prepared food” does not include any uncooked meat or eggs. Prepared food may be eaten either on or off the premises of the food vendor.

“Polystyrene foam container” means a container which is manufactured with the use of or contains chlorofluorocarbons.

“Restaurant” means an establishment, located within the City and County of Honolulu, which sells

prepared food to be eaten by customers. "Restaurant" includes a sidewalk food vendor.

"Retail food vendor" means a store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within the City and County of Honolulu, which sells prepared food.

(Added by Ord. 89-126)

**Sec. 41-27.2 Ban on use of polystyrene foam containers.**

- (a) Except if exempted under Section 41-27.3, from January 1, 1990, no food vendor shall serve prepared food in any polystyrene foam container which is manufactured with the use of or contains chlorofluorocarbons. The department may require a food vendor, supplier or distributor to furnish a written statement from the manufacturer or supplier of the container used by the food vendor, indicating that use of the container is not prohibited.
- (b) Except if exempted under Section 41-27.3, from January 1, 1990, no food packager shall package meat, eggs, bakery products or other food in any polystyrene foam container which is manufactured with the use of or contains chlorofluorocarbons. The department may require the manufacturer or supplier of the container used by the food packager to furnish a written statement from the manufacturer of the packaging, indicating that use of the container is not prohibited.

(Added by Ord. 89-126)

**Sec. 41-27.3 Exemptions.**

The department may exempt a food vendor or food packager from compliance with the prohibition of Section 41-27.2 until December 31, 1990. The department may grant an exemption upon application and a showing by the applicant that compliance with the prohibition would cause undue hardship. "Undue hardship" shall be construed to include, but not be limited to:

- (a) Situations where there are no acceptable alternatives to packaging with polystyrene foam containers for reasons which are unique to the applicant; or
- (b) Situations where compliance with the prohibition would deprive a person of a legally protected right or where the product containing CFCs was purchased prior to the effective date of the ordinance codified in this article.

(Added by Ord. 89-126)

**Sec. 41-27.4 Violation—Penalty.**

- (a) It is unlawful to violate Section 41-27.2.
- (b) Each violation shall be punishable by a fine as follows:
  - (1) A fine not exceeding \$250.00 for the first violation within a one-year period; or
  - (2) A fine not exceeding \$500.00 for the second and each subsequent violation within the one-year period from the first violation.

The "one-year period" shall be deemed to commence on the date of conviction for the first violation and end on the same day and month one year later.

(Added by Ord. 89-126)

**Sec. 41-27.5 Enforcement.**

- (a) 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 Section 41-27.2, which does not provide for the physical arrest of such violators. The form and content of the 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 citation used in modern methods of arrest, and so designed to include all necessary information to make the same valid within the laws and rules of the State of Hawaii and the City and County of Honolulu.
- (b) In every case, when a citation is issued, the original 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. Every citation shall be numbered, and each carbon copy shall bear the same number as its original.
- (c) Enforcement and administration of this article shall be under the jurisdiction of the department of

public works. Enforcement of this article shall also be under the jurisdiction of the Honolulu police department.

(Added by Ord. 89-126)

#### **Sec. 41-27.6 Rules.**

The department may promulgate reasonable and necessary rules to administer or enforce this article. Rules shall be promulgated in accordance with HRS Chapter 91.

(Added by Ord. 89-126)

### **Article 28. Parking Space Reserved for Persons with Disabilities\***

[\***Editor's Note:** The title of Article 28 was amended from "Parking Space Reserved for Disabled Persons" to "Parking Space Reserved for Persons with Disabilities" by Ordinance No. 14-25.]

#### **Sections:**

- 41-28.1 Definitions.**
- 41-28.2 Parking or standing in reserved space.**
- 41-28.3 Identification of reserved space.**
- 41-28.4 Responsible manager—Powers and duties.**
- 41-28.5 Responsible manager—Authority to regulate conditions of parking.**
- 41-28.6 Violation—Penalty—Enforcement.**
- (41-28.7 Volunteer disabled parking enforcement program. Repealed by Ord. 03-40.)**
- 41-28.7 Reserved.**

#### **Sec. 41-28.1 Definitions.**

For the purpose of this article:

"Parking placard for a person with a disability" means a "removable windshield placard" or a "temporary removable windshield placard" as those terms are defined in HRS Section 291-51 and Hawaii Administrative Rules Section 11-219-4 and includes a similar placard issued by an authority of another county of the State of Hawaii or of another state or country or political subdivision thereof.

"Parking space reserved for persons with disabilities" means a parking space which is:

- (1) Part of real property:
  - (A) Owned by a private person; and
  - (B) Metered or unmetered;
- (2) Reserved by the responsible manager for the parking of a motor vehicle driven by or for a person with a disability; and
- (3) Clearly identified, by signs and markings in accordance with Section 41-28.3, by the responsible manager for the parking of a motor vehicle driven by or for a person with a disability.

"Person with a disability" shall have the same meaning ascribed to that term in HRS Section 291-51 and Hawaii Administrative Rules Section 11-219-4.

"Responsible manager" means a person who is authorized to regulate the use of a parking space reserved for persons with disabilities because of ownership of the parking space or under a lease, rental or management agreement.

"Special license plates" shall have the same meaning as is ascribed to that term in HRS Section 291-51 and Hawaii Administrative Rules Section 11-219-4 and includes similar special license plates issued by an authority of another county of the State of Hawaii or of another state or country or political subdivision thereof.

"Volunteer" means a person who is willing to provide services on behalf of the city without compensation, except for the benefits provided in Section 41-28.7(f).

(Added by Ord. 89-93; Am. Ord. 96-54, 99-01, 14-25)

#### **Sec. 41-28.2 Parking or standing in reserved space.**

No person shall park a motor vehicle or cause it to stand or be parked in a parking space reserved for

persons with disabilities except in accordance with HRS Chapter 291, Part III and Title 11, Chapter 219 of the Hawaii Administrative Rules, entitled "Parking for Persons with Disabilities".  
(Added by Ord. 89-93; Am. Ord. 96-54, 14-25)

**Sec. 41-28.3 Identification of reserved space.**

- (a) The department of transportation services, in accordance with HRS Chapter 91, shall adopt rules to establish standards for the designation and identification of a parking space reserved for persons with disabilities, in accordance with applicable state and federal requirements, and may adopt rules for the implementation, administration, and enforcement of this article. The standards shall include a notice, in conformance with HRS Section 290-11, that the parking or standing in the parking space reserved for persons with disabilities of a motor vehicle without special license plates or a parking placard for a person with a disability displayed in accordance with law shall be unauthorized and prohibited. The notice shall also:
- (1) Warn violators that the motor vehicle may be towed away at the owner's expense; and
  - (2) State the location to which the motor vehicle will be towed and held.
- (b) Each responsible manager providing parking spaces reserved for persons with disabilities shall clearly identify those parking spaces in conformance with the standards established under subsection (a) of this section.

(Added by Ord. 89-93; Am. Ord. 96-54, 14-25)

**Sec. 41-28.4 Responsible manager—Powers and duties.**

- (a) A motor vehicle parked or standing in a parking space reserved for persons with disabilities in a manner contrary to Section 41-28.2 shall be deemed an unauthorized vehicle under HRS Section 290-11.
- (b) A responsible manager shall have the power and duty to penalize the unauthorized parking of a motor vehicle in a parking space reserved for persons with disabilities. The penalty imposed shall include one or both of the following:
- (1) Towing away of the motor vehicle in accordance with HRS Section 290-11; or
  - (2) Placement of a sticker on the windshield of the motor vehicle which shall notify the driver of the violation and which shall be removable. Placement of the sticker shall be deemed an exercise of the lawful power and duty of a responsible manager. The responsible manager shall have no duty to remove the sticker. The fact that the sticker is difficult to remove shall not impose a duty on the responsible manager to remove the sticker.
- (c) This section shall be deemed restrictions on the unauthorized parking of a motor vehicle on private property which are additional to the provisions of HRS Section 290-11.

(Added by Ord. 89-93; Am. Ord. 14-25)

**Sec. 41-28.5 Responsible manager—Authority to regulate conditions of parking.**

Nothing in this article shall be deemed as preventing a responsible manager from regulating the duration, charges or other conditions imposed on the privilege of parking in a parking space reserved for persons with disabilities, so long as the regulation is not inconsistent with this article or any other law.

(Added by Ord. 89-93; Am. Ord. 14-25)

**Sec. 41-28.6 Violation—Penalty—Enforcement.**

- (a) Each violation of Section 41-28.2 shall be deemed a violation and punishable by a fine of not less than \$50.00 nor more than \$250.00.
- (b) (1) There shall be established a form of summons or citation for use in citing violations of Section 41-28.2 which does not provide for the physical arrest of the violators. The form and content of the 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 summonses or citations used in modern methods of arrest, and so designed to include all necessary information to make the summons or citation valid within the laws and rules of the State of Hawaii and the City and County of Honolulu. Every summons or citation shall be numbered and each carbon

copy shall bear the same number as its original.

- (2) In every case, when a summons or citation is issued, the original of the summons or citation 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 summons or citation and provide for the disposition of the original and any other copies.
- (c) The chief of police may commission, in accordance with rules adopted by the chief, special officers to issue citations for violations of Section 41-28.2.

(Added by Ord. 89-93; Am. Ord. 96-54)

**(Sec. 41-28.7 Volunteer disabled parking enforcement program. Repealed by Ord. 03-40.)**

**Sec. 41-28.7 Reserved.**

## **Article 29. Motor Vehicle Alarms**

### **Sections:**

- 41-29.1 Sanctions for emission of audible sound for certain durations.**
- 41-29.2 Activation for at least 10 minutes—Defined.**
- 41-29.3 Exception.**
- 41-29.4 Other definitions.**
- 41-29.5 Authority to enter property to identify motor vehicle and owner.**
- 41-29.6 Removal of motor vehicle from property.**
- 41-29.7 Authority to deactivate alarm system.**

### **Sec. 41-29.1 Sanctions for emission of audible sound for certain durations.**

- (a) As provided in HRS Section 291-24.6, it is unlawful for any motor vehicle alarm system installed in a motor vehicle to emit any audible sound for more than five continuous minutes.
- (b) If a motor vehicle alarm system is activated for at least 10 minutes:
  - (1) The motor vehicle may be removed from public or private property in accordance with Section 41-29.6; and
  - (2) The motor vehicle alarm system may be silenced in accordance with Section 41-29.7, prior to removal of the motor vehicle from public or private property.
- (c) If a motor vehicle alarm system is activated for at least 10 minutes and, within that minimum 10-minute period, emits audible sound for more than five continuous minutes, both subsections (a) and (b) of this section shall be applicable.

(Added by Ord. 90-3)

### **Sec. 41-29.2 Activation for at least 10 minutes—Defined.**

- (a) A motor vehicle alarm system shall be deemed activated for at least 10 minutes if:
  - (1) The alarm system emits an audible sound for 10 continuous minutes; or
  - (2) The alarm system emits an audible sound intermittently within a 10-minute period and the episodes of audible sound subsequent to the first episode:
    - (A) Are not caused by the disturbance of or tampering with the motor vehicle, but rather
    - (B) Are caused by an automatic activation and deactivation mechanism of the alarm system.

For the purpose of measuring the minimum 10-minute period, the period shall be deemed to commence upon the first audible sound from the motor vehicle alarm system.
- (b) Audible sound shall be deemed to be emitted “intermittently within a 10-minute period” if the audible sound is emitted interruptedly in a sequence of at least 10 minutes and, within the sequence:
  - (1) Not more than one minute of silence interrupts consecutive episodes of audible sound; and
  - (2) There shall be no minimum duration for any episode of audible sound.

(Added by Ord. 90-3)

### **Sec. 41-29.3 Exception.**

The provisions of this article shall not apply to a person who is doing that which is reasonably

necessary for the purpose of setting by remote control or otherwise of the motor vehicle alarm and testing of the setting.

(Added by Ord. 90-3)

**Sec. 41-29.4 Other definitions.**

For the purposes of this article:

“Motor vehicle alarm system” or “alarm system” means the same as the definition of “motor vehicle alarm system” under HRS Section 291-24.6.

“Police officer” means an officer of the police department who is authorized to enforce the law.

“Tow service” means a business engaged in the towing of motor vehicles. \

(Added by Ord. 90-3)

**Sec. 41-29.5 Authority to enter property to identify motor vehicle and owner.**

A police officer may enter onto any public or private property to identify or obtain information to identify:

- (a) A motor vehicle, the alarm system of which has been activated for at least 10 minutes; and
- (b) The motor vehicle’s registered owner.

(Added by Ord. 90-3)

**Sec. 41-29.6 Removal of motor vehicle from property.**

- (a) When the alarm system of a motor vehicle has been activated for at least 10 minutes and the motor vehicle is on public property or private property, a police officer may remove or cause to be removed the vehicle from the property to a storage area or other place of safety. The registered owner of the motor vehicle shall be responsible for all reasonable expenses, costs, and charges incurred by the deactivation of such alarm, and the removal and storage of such vehicle in accordance with this article.
- (b) Upon discovery by a police officer of a motor vehicle which is or may become subject to removal pursuant to this section, the officer shall make reasonable efforts to locate the registered owner of the motor vehicle and request the silencing of the alarm system. If the registered owner refuses or is unable to immediately silence the alarm system or if, after reasonable efforts, the registered owner cannot be located, the motor vehicle may be removed.
- (c) Prior to removing the motor vehicle, the police officer may authorize the tow service to deactivate the alarm system in accordance with Section 41-29.7.
- (d) Whenever a police officer removes or causes to be removed a motor vehicle from property as authorized in this section, and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the registered owner of the vehicle, the officer shall immediately notify the police department dispatch office. The notification shall specify that the motor vehicle has been removed, the reason for the removal, and the place to which the vehicle has been removed.
- (e) If the registered owner is unknown or cannot be ascertained, the police officer shall immediately notify the police department dispatch office that the registered owner is unknown. In the event the vehicle is not returned to the owner within a period of three days, then and in that event, the police department dispatch office shall immediately send or cause to be sent a written report of such removal by mail to the director of finance. Such report shall include a complete description of the motor vehicle, the license plate number of the vehicle, the date, time, and place from which removed, the reasons for such removal and the place to which the vehicle has been removed.
- (f) This article shall be deemed an ordinance authorizing the police to remove and store vehicles. As such:
  - (1) HRS Section 290-10 shall apply to a motor vehicle which has been removed from property and stored pursuant to this section; and
  - (2) The director of finance may dispose of the motor vehicle in accordance with HRS Section 290-10.

(Added by Ord. 90-3)

**Sec. 41-29.7 Authority to deactivate alarm system.**

- (a) A police officer may authorize the tow service to enter or open a motor vehicle, in which the alarm system has been activated for at least 10 minutes, and silence the alarm system. The tow service shall do that which is reasonably necessary when entering or opening the motor vehicle and silencing the alarm system.
- (b) Prior to authorizing the entering or opening of the motor vehicle, the police officer shall have made the reasonable efforts to locate the registered owner and request the silencing of the alarm system, as required under Section 41-29.6 (b). If, pursuant to Section 41-29.6 (b), the police officer becomes authorized to remove the motor vehicle, the officer also may authorize the entering or opening of the motor vehicle and silencing of the alarm system.
- (c) After silencing the alarm system, the motor vehicle shall be towed to a storage area or other place of safety. The vehicle shall be locked or otherwise secured from unauthorized entry and written notice of the action shall be left on the windshield of the motor vehicle. If the alarm system is also in violation of HRS Section 291-24.6, the written notice required under this subsection shall be in addition to the summons or citation issued for the violation.

(Added by Ord. 90-3)

**Article 30. Historic Preservation**

**Sections:**

- 41-30.1 Findings and policy.**
- 41-30.2 On-site curation.**
- 41-30.3 Removal, transfer prohibited.**

**Sec. 41-30.1 Findings and policy.**

- (a) Findings.
  - (1) The council of the City and County of Honolulu finds that HRS Section 6E-15 provides in part that “In addition to any power or authority of a political subdivision to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing body of any political subdivision may provide by regulations, special conditions, or restrictions for the protection, enhancement, preservation, and use of historic properties...”
  - (2) Significant archaeological findings, including major artifacts and ancient burials, vital to the understanding, preservation and interpretation of the Hawaiian history and culture, have been discovered on public lands owned and controlled by the City and County of Honolulu, including Kualoa Regional Park. Kualoa Regional Park is located within the ahupua’a of Kualoa which is entered into the National Register of Historic Places as the Kualoa Ahupua’ a Historical District, and in the state register of historic places, on the basis of its mythological and legendary importance to the Hawaiian people.
  - (3) Extensive archaeological site survey and research activities have revealed the historic and cultural value of Kualoa, where much archaeological work remains to be done. Archaeological data and many thousands of artifacts disclose unusual prehistoric Hawaiian use of the area, dating back to at least the 13th century A.D., and ancient remains of human burials are frequently being uncovered because of rapid beach erosion, necessitating close archaeological monitoring.
  - (4) Despite the oftentimes enormous significance of archaeological findings discovered on city-owned or controlled lands which have been placed on the National Register of Historic Places and state register of historic places, such as Kualoa Regional Park, or which meet the criteria and would therefore be eligible for placement on the national register or state register, there is lacking a cohesive city policy providing for the deposition and curation, in conformance with generally accepted scientific methods, of field notes, photographs, negatives, maps, artifacts, ancient burial remains or other materials generated, or likely to be generated, following initial stages of identification, survey and discovery of artifacts and remains. At Kualoa Regional Park, for example, there is a backlog of recovered archaeological materials, field records, maps, and photographs which need to be fully documented, analyzed, and accessioned as a

prerequisite to deposition and curation.

- (b) Policy. In recognition of the significance and unique historical and cultural resources known to or reasonably believed to be associated with city-owned or controlled lands which have been placed on the National Register of Historic Places or the state register of historic places, or those which meet the criteria and would therefore be eligible for placement on the national register or state register, it is declared to be the policy of the City and County of Honolulu that:
- (1) The development of all such lands shall be sensitive to, and consistent with, the specific historical and cultural characteristics of the lands.
  - (2) The development of all such lands shall include the implementation of programs, including, but not necessarily limited to, educational and interpretive programs to provide an understanding of the abundant and unique features of Hawaiian culture through reference to archaeological sites and artifacts located at, or removed from, the developed lands.
  - (3) Interested individuals and groups, including the office of Hawaiian affairs, shall be consulted in the decision making process on the development of all such lands.

(Added by Ord. 90-24)

**Sec. 41-30.2 On-site curation.**

To the extent practicable, and not inconsistent with law, assemblages of prehistoric and historic artifacts recovered from a site on land owned or controlled by the city which has been placed on the National Register of Historic Places or the state register of historic places, or which meets the criteria and would therefore be eligible for placement on the national register or state register, shall be properly curated at the site.

(Added by Ord. 90-24)

**Sec. 41-30.3 Removal, transfer prohibited.**

- (a) Any removal, transfer, loan, sale, destruction or alienation, whatsoever, of any assemblage of prehistoric and historic artifacts recovered from a site on land owned or controlled by the city which has been placed on the National Register of Historic Places or the state register of historic places, or which meets the criteria and would therefore be eligible for placement on the national register or state register, shall be prohibited except in accordance with a specific plan approved by the council, which plan shall include detailed justification and specific methods to ensure the preservation, integrity and continued accessibility to the artifacts in furtherance of the policies set forth in this article.
- (b) Any person convicted of a violation of this article shall be punished by a fine not more than \$500.00 or by imprisonment for not more than 30 days, or by both such fine and imprisonment.

(Added by Ord. 90-24)

**Article 31. Noise Control**

**Sections:**

- 41-31.1 Prohibited noise.**
- 41-31.2 Enforcement.**
- 41-31.3 Violation—Penalty.**
- 41-31.4 Permits.**
- 41-31.5 Exemptions.**

**Sec. 41-31.1 Prohibited noise.**

- (a) It is unlawful for any person or persons to play, use, operate or permit to be played, used or operated, any radio, tape recorder, cassette player or other machine or device for reproducing sound, if it is located in or on any of the following:
- (1) Any public property, including any public street, highway, building, sidewalk, park or thoroughfare; or
  - (2) Any motor vehicle on a public street, highway or public space;

- and if the sound generated is audible at a distance of 30 feet from the device producing the sound.
- (b) Possession by a person or persons of any of the machines or devices enumerated in subsection (a) shall be prima facie evidence that that person operates, or those persons operate, the machine or device.

(Added by Ord. 90-26)

**Sec. 41-31.2 Enforcement.**

- (a) Powers of Arrest or Citation. Any authorized police officer shall issue a citation for any violation under this article, except they may arrest for instances when:
- (1) The alleged violator refuses to provide the officer with such person's name and address and any proof thereof as may be reasonably available to the alleged violator.
  - (2) When the alleged violator refuses to cease such person's illegal activity after being issued a citation.
- (b) Citation.
- (1) There shall be provided for use by authorized police officers, a form of citation for use in citing violators of this article which does not mandate physical arrest of such violators. The form and content of such 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 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, a copy of the same shall be given to the violator.
  - (3) Every citation shall be consecutively numbered and each carbon copy shall bear the name of its respective original.

(Added by Ord. 90-26)

**Sec. 41-31.3 Violation—Penalty.**

Any person convicted of a violation of the provisions of this article shall be punished by a fine of \$100.00 for the first offense, \$500.00 for the second offense within six months of the first offense, and \$1,000.00, or forfeiture of the sound system or components of the sound system up to \$1,000.00 in value, or a combination of forfeiture and fine to total \$1,000.00 for conviction of the third offense within one year of the first offense.

(Added by Ord. 90-26)

**Sec. 41-31.4 Permits.**

- (a) A permit for a temporary exemption from the provisions of this article may be issued by the director of finance to commercial, religious, political, civic, charitable, athletic and other organizations, or individuals, for activities such as carnivals, parades, fund raisers, fairs, bazaars, public speeches and meetings.
- (b) The director of finance shall prescribe a form of application for such a permit which shall be completed by the applicant and which, when completed, shall state the date, time of day, duration and nature of the proposed activity, the reason for the proposed activity, the name of the person who shall be in charge of the proposed activity, and such other pertinent information as the director shall desire.
- (c) In determining whether to grant or deny an application for a permit hereunder, the director shall consider the information provided in the application together with the impact of the proposed noise on the health, safety and welfare of the residents of and visitors to the surrounding area. If more information is needed in order for the director to make a determination on the application, the director may request further information from the applicant by means of a supplemental application.
- (d) The applicant shall submit the completed form, accompanied by a fee of five dollars, to the director not later than five days prior to the proposed activity; thereafter, the director shall notify the applicant of the decision to grant or deny the permit within three days of the submission of the completed application and fee and any required supplemental application.
- (e) The permit shall state the date, place, time, duration and nature of the proposed activity, shall be in

the possession of the person in charge of the activity, and shall be produced for inspection upon the request of any law enforcement officer.

- (f) The director may issue a permit subject to conditions which shall be stated upon the permit, including limitations upon the sound level, duration, or time of day of the activity, or the requirement that breaks be taken in the activity.
- (g) The director may adopt rules not inconsistent herewith for the implementation of the permit system established in this section. Such rules may include provisions for waiver of the application fee in appropriate situations or for the granting of a permit when an application is received less than five days prior to the proposed activity.

(Added by Ord. 90-26)

#### **Sec. 41-31.5 Exemptions.**

The following shall be exempt from the prohibitions set forth in this article:

- (a) Activities of the city and county, State of Hawaii or the United States; and
- (b) Activities of private persons or entities acting within the permitted uses of a permit issued by the city and county, State of Hawaii or the United States.

(Added by Ord. 90-26)

### **Article 32. Loitering on Public School Premises**

#### **Sections:**

**41-32.1 Loitering on public school premises.**

**41-32.2 Exclusions.**

**41-32.3 Presence considered prima facie case of violation.**

**41-32.4 Violation—Penalty**

#### **Sec. 41-32.1 Loitering on public school premises.**

No person shall go or remain upon, loiter around, in or upon or play or engage in any game in or upon any public school buildings or public school grounds, without lawful business or excuse for so doing.

(Sec. 13-5.1, R.O. 1978 (1983 Ed.))

#### **Sec. 41-32.2 Exclusions.**

The provisions of Section 41-32.1 shall not apply to bona fide visitors, whether residents of the State of Hawaii or tourists, who may go into public school buildings or upon public school grounds for the purpose of observing or inspecting the same or to any school teacher or other person in the department of education of the State of Hawaii, on the island of Oahu.

(Sec. 13-5.2, R.O. 1978 (1983 Ed.))

#### **Sec. 41-32.3 Presence considered prima facie case of violation.**

A prima facie case of a violation of this article shall be established upon the showing that any person charged with the violation of said section was found, seen or arrested in any public school buildings or upon public school grounds in the city. Upon such showing the burden of proof shall be upon the accused to show such person's lawful business or excuse for going or being in any public school building or upon any public school grounds in the city.

(Sec. 13-5.3, R.O. 1978 (1983 Ed.))

#### **Sec. 41-32.4 Violation—Penalty.**

Any person violating any of the provisions of this article shall be punished by a fine not exceeding \$100.00.

(Sec. 13-5.4, R.O. 1978 (1983 Ed.))

**Article 33. Regulated Use of Uniforms By Private Security Personnel\***  
[\*Editor's Note: Title inserted by the Office of Corporation Counsel]

**Sections:**

- 41-33.1 Legislative intent.**
- 41-33.2 Definition.**
- 41-33.3 Uniforms.**
- 41-33.4 Prohibition.**
- 41-33.5 Exceptions.**
- 41-33.6 Penalty.**

**Sec. 41-33.1 Legislative intent.**

It is hereby declared to be the legislative intent of the council to regulate the uniforms of private security personnel not covered under HRS Chapter 463 by establishing certain standards for their appearance.

(Added by Ord. 92-133)

**Sec. 41-33.2 Definition.**

The term "private security personnel" shall mean any uniformed persons responsible for the safekeeping of an employer's property and persons thereon, and for observation and reporting relative to such safekeeping.

(Added by Ord. 92-133)

**Sec. 41-33.3 Uniforms.**

- (a) The uniforms worn by private security personnel must be of two or more different and contrasting colors or two or more different shades of the same color or of one solid color that does not resemble the color of the uniform worn by officers of the Honolulu police department. Each uniform shall be approved by the chief of police and a color photograph of each uniform shall be filed with the Honolulu police department.
- (b) No badges or other metallic objects that closely resemble the badge of the Honolulu police department shall be worn on the uniform or any outer garment covering the upper body.
- (c) If any outer garment covers the upper part or top of the uniform, a white plaque bearing the word "SECURITY" in letters at least one-inch high shall be worn on the left breast area of that garment and the word "SECURITY" in letters at least three inches high shall be worn on the back area of that garment.

(Added by Ord. 92-133)

**Sec. 41-33.4 Prohibition.**

- (a) No person shall wear a private security uniform that violates the requirements of Section 41-33.3.
- (b) No person shall instruct or authorize another to wear a private security uniform that violates the requirements of Section 41-33.3.

(Added by Ord. 92-133)

**Sec. 41-33.5 Exceptions.**

These restrictions shall not apply to the following: government security personnel; private security personnel who are regulated by the State of Hawaii Board of Private Detectives and Guards; and private security personnel who are not uniformed.

(Added by Ord. 92-133)

**Sec. 41-33.6 Penalty.**

Any corporation, unincorporated association, or member thereof convicted of a violation of any provision of this article shall be punished by a fine not exceeding \$1,000.00 or by imprisonment not exceeding one year or both.

(Added by Ord. 92-133)

## Article 34. Sound Levels for the Waikiki Shell

### Sections:

- 41-34.1 Findings and policy.**
- 41-34.2 Definitions.**
- 41-34.3 Sound level limits.**
- 41-34.4 Exemptions.**
- 41-34.5 Measurement of sound levels.**
- 41-34.6 Violation—Penalty.**

### Sec. 41-34.1 Findings and policy.

The Waikiki Shell is a premier forum for outdoor concerts and activities and since 1953 has provided an idyllic setting. The city is concerned and desirous of ensuring that the peace and quiet enjoyed by nearby residents is not unduly disturbed by the events held at the Shell, while at the same time it wishes to continue to provide a venue for quality entertainment and events in the uniquely beautiful setting that is the Shell.

The city finds that in the absence of established sound levels for its facilities, sound levels for the Shell have been established by the state department of health in Title 11 of its Administrative Rules. Sound levels established by the department of health's rules fail to take into consideration the unique characteristics and function of the Shell. Accordingly, it is the intent of this article to establish sound level limits for the Shell.

(Added by Ord. 91-88)

### Sec. 41-34.2 Definitions.

For the purposes of this article:

“‘A’ level” means the total sound level of all noises as measured with sound level meter using the “A” weighting network. The unit of measurement is the dBA.

“Decibel” means one-tenth of a Bel, a unit of sound level.

(1) “dB” is an abbreviation for decibels.

(2) “dBA” is an abbreviation for A-weighted sound level expressed in decibels.

“Shell” means the Waikiki Shell.

“Sound” means a fluctuation of air pressure which stimulates the human nervous systems through the ear, eardrums, and connecting nerves.

“Sound amplifier” means an electronic device used to amplify electrical outputs, including but not limited to those from microphones, phonograph players, compact disc players, tape decks or musical instruments.

“Sound level meter” means an instrument or combination of instruments, which meets or exceeds the requirements for a Type I or Type II sound level meter as specified in ANSI specification for sound level meter S1.4-197 or IEC 179 or IEC 123.

“Sound pressure level (decibel)” means 20 times the logarithm to the base ten of the ratio of the measured sound pressure to the reference sound pressure of 0.0002 dynes per square centimeter or 20 micropascals.

“Sound production or reproduction device” means a device intended primarily for the production or reproduction of sound, including but not limited to any musical instrument, radio receiver, television receiver, tape recorder, phonograph, organ, compact disc player or sound amplifying system.

“Tenant” means a person or entity executing a rental agreement for the Neal Blaisdell Center and Shell and the agents, representatives, employees, and officers of such person or entity, including an independent contractor, using the premises with the permission of the tenant.

(Added by Ord. 91-88)

### Sec. 41-34.3 Sound level limits.

- (a) Sound levels for events at the Shell, whether amplified or not, shall not exceed 68 dBA for more than 10 percent of the time within any 20-minute period as measured at or near the New Otani Kaimana

Beach Hotel at the makai side of Kalakaua Avenue in areas zoned Apartment/Hotel/Business and shall apply from ground level to a perpendicular plane projected above the height of the highrise buildings.

- (b) Sound level limits established in subsection (a) of this section shall be applicable between the hours of seven a.m. through 10 p.m. of the same day.
- (c) Under no circumstances shall a tenant or performer allow events within their control to continue after 10 p.m.

(Added by Ord. 91-88; Am. Ord. 96-58)

#### **Sec. 41-34.4 Exemptions.**

The provisions of this article shall not apply to:

- (a) Occasional events of significant cultural benefit to residents of Oahu, including but not limited to, celebrations commemorating the beginning of a new year or ethnic and cultural festivals;
- (b) One-time events designed for the purpose of significantly enhancing the economic well-being of the tourist industry, including but limited to, events scheduled for live broadcast outside the State of Hawaii.

(Added by Ord. 91-88)

#### **Sec. 41-34.5 Measurement of sound levels.**

- (a) Certification. Persons conducting sound measurements for the enforcement of this article shall be personnel of the department of auditoriums who shall have been trained in the techniques of sound measurement and the operation of sound level meters or other sound measuring instruments and shall have been certified as competent by the director of the department of health of the State of Hawaii.
- (b) Sound level measurements shall be conducted using standard procedures with sound level meters using the “A” weighting and “slow” meter response unless otherwise stated.

(Added by Ord. 91-88)

#### **Sec. 41-34.6 Violation—Penalty.**

A tenant whose event exceeds the sound level limits established by this article shall, after notice and hearing, be subject to a fine of not less than one percent of the gross receipts or \$500.00, whichever is greater, for the event that exceeds the sound level limits, or \$500.00 for events for which no gross receipts are collected. (Added by Ord. 91-88)

### **Article 35. Secondhand Dealers**

#### **Sections:**

##### **41-35.1 Definitions.**

##### **41-35.2 License required—Denial, suspension, and revocation.**

##### **41-35.3 Fee.**

#### **Sec. 41-35.1 Definitions.**

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

“Director” means the director of finance of the city or the director’s duly authorized subordinates.

“Secondhand dealer” means the same as defined in HRS Section 486M-1.

(Added by Ord. 95-03)

#### **Sec. 41-35.2 License required—Denial, suspension, and revocation.**

- (a) It is unlawful for any person to engage in business as a secondhand dealer without obtaining a license issued by the director in accordance with the terms, conditions and penalties enumerated in HRS Chapter 445 and HRS Chapter 486M.
- (b) The director may deny, suspend or revoke such license for violation of any provision of this article or HRS Chapter 445 and HRS Chapter 486M.

(Added by Ord. 95-03)

**Sec. 41-35.3 Fee.**

The annual fee for a secondhand dealer license shall be \$100.00, payable to the director. (Added by Ord. 95-03)

## **Article 36. Scrap Dealers**

**Sections:**

**41-36.1 Definitions.**

**41-36.2 License required—Denial, suspension, and revocation.**

**41-36.3 Fee.**

**Sec. 41-36.1 Definitions.**

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

“Director” means the director of finance of the city or the director’s duly authorized subordinates.

“Scrap dealer” means the same as defined in HRS Section 445-231.

(Added by Ord. 95-05)

**Sec. 41-36.2 License required—Denial, suspension, and revocation.**

(a) It is unlawful for any person to engage in business as a scrap dealer without obtaining a license issued by the director in accordance with the terms, conditions and penalties enumerated in HRS Chapter 445.

(b) The director may deny, suspend or revoke such license for violation of any provision of this article or HRS Chapter 445.

(Added by Ord. 95-05)

**Sec. 41-36.3 Fee.**

The annual fee for a scrap dealer license shall be \$100.00, payable to the director. (Added by Ord. 95-05)

## **Article 37. Possession, Use, and Sale of Pepper Sprays for Self-Defense**

**Sections:**

**41-37.1 Definitions.**

**41-37.2 Exceptions.**

**41-37.3 Restrictions on possession, sale, and use of pepper sprays.**

**41-37.4 License to distribute—Application and requirements.**

**41-37.5 Conditions of license.**

**41-37.6 Suspension or revocation of license.**

**41-37.7 Forfeiture.**

**41-37.8 Rules.**

**41-37.9 Violation—Penalty.**

**Sec. 41-37.1 Definitions.**

“Adult” means any natural person other than a minor.

“Chief of police” means the chief of police of the City and County of Honolulu or the chief of police’s authorized subordinate.

“Chemical device” means any aerosol container or other device that is capable of emitting chloroacetaphenone (CN), orthochlorobenzalmalononitrile (CS), or oleoresin capsicum (OC), or any combination or derivative thereof, in a vapor or liquid form.

“Controlled substance” means the same as defined in HRS Section 329-1.

“Department” means the Honolulu police department.

“Designated place of business” means a fixed place of business owned or leased by a licensee and designated by the licensee in its application under Section 41-37.4 as a place where it desires to sell or otherwise distribute pepper spray on a regular basis. “Designated place of business” does not include any temporary space rented or leased by a licensee at a swap meet, open market or other similar setting.

“Licensee” means any person who has obtained, pursuant to Section 41-37.4, a license to sell, transport or otherwise distribute pepper sprays in the city.

“Minor” means any natural person below the age of 18 years.

“Pepper spray” means any aerosol container or other device designed to fit into a handbag or a pants pocket and has a trigger-guard, flip top or other mechanism to prevent the accidental release of the spray, that: (1) is capable of emitting oleoresin capsicum (OC), or any derivative thereof, in a vapor or liquid form; (2) contains only the chemical substance oleoresin capsicum, or any derivative thereof, without containing chloroacetaphenone (CN) or orthochlorobenzalmalononitrile (CS); and (3) contains a non-flammable propellant and/or carrier.

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

(Added by Ord. 95-49)

### **Sec. 41-37.2 Exceptions.**

This article shall not apply to persons authorized under Sections 40-2.4 and 40-2.7 to possess, use, sell, transport, or otherwise distribute chemical devices in the city; provided that the persons possess, use, sell, transport or otherwise distribute the chemical devices while acting in their capacities as employees of the city, of private security agencies, and of other organizations, or as licensed vendors, all in accordance with Chapter 40, Article 2.

(Added by Ord. 95-49)

### **Sec. 41-37.3 Restrictions on possession, sale, and use of pepper sprays.**

- (a) It is unlawful for any person to use any pepper spray for any purpose except:
  - (1) Self-defense;
  - (2) Defense of another person; or
  - (3) Protection of property of the person or of another person.
- (b) It is unlawful for any person to sell or offer for sale any pepper spray in the city without a license obtained pursuant to Section 41-37.4.
- (c) It is unlawful for any person to sell, offer for sale or otherwise furnish any pepper spray to a minor in the city.
- (d) It is unlawful for a minor to purchase, possess or use any pepper spray in the city.
- (e) It is unlawful to sell or offer for sale any pepper spray on premises where liquor or alcoholic beverages are consumed.
- (f) It is unlawful for any person to alter the manufacturer’s name on any pepper spray to be carried or used in the city.

(Added by Ord. 95-49)

### **Sec. 41-37.4 License to distribute—Application and requirements.**

- (a) Any person desiring to sell or offer for sale any pepper spray in the city may apply for a license using forms prescribed by the director of finance. The application shall set forth the name and location of the principal place of business of the licensee and, if applicable, each additional designated place of business at which the licensee desires to sell pepper spray on a regular basis.
- (b) Upon receipt of the completed form and the fee established in subsection (f), the director of finance shall issue a license and, if requested, certified copies thereof to the applicant.
- (c) Prior to making a sale of or otherwise distributing pepper spray, the licensee shall provide a point-of-sale briefing that includes, but is not limited to, the following:
  - (1) The proper and safe use of the spray;
  - (2) The shelf life of the spray;
  - (3) The proper disposal of the spray;
  - (4) First-aid or medical remedies for people who come in contact with the spray; and

(5) Current information regarding the effectiveness and limitations of the spray.

After giving the briefing, and prior to the sale or distribution of the pepper spray, the licensee shall obtain a signed acknowledgement from the purchaser or other recipient acknowledging that they have received the briefing. The acknowledgement shall be on a form provided by the department of finance or a copy thereof.

- (d) The license or a certified copy thereof shall be posted at each designated place of business during any hours when pepper spray is being sold or offered for sale.
- (e) No license shall be issued to a minor.
- (f) The annual fee for a license under this section shall be \$25.00 for the principal place of business of the licensee and shall be \$25.00 for each additional designated place of business of the licensee, which shall be payable to the director of finance. The license shall be provided by the director of finance for the principal place of business and, if applicable, a certified copy of the license shall be provided for each additional designated place of business.

(Added by Ord. 95-49; Am. Ord. 96-77)

#### **Sec. 41-37.5 Conditions of license.**

- (a) The licensee's books and records for the licensee's inventory shall be subject to inspection by the department at reasonable times during normal business hours. In addition to the records required to be kept under subsection (b), the licensee shall keep a record of the licensee's purchases, sales and other acquisitions and distributions of pepper sprays as well as a record of the licensee's current inventory of pepper sprays.
- (b) The licensee shall keep records of pepper sprays sold or otherwise distributed by the licensee in the city for a minimum of five years from the date of sale or other distribution. The records kept shall include:
  - (1) The recipient's name, date of birth and address;
  - (2) The quantity and description of the pepper spray distributed, including the name of the manufacturer;
  - (3) If applicable, the business name, address, telephone number, and the pepper spray license number of the purchaser;
  - (4) The date and time of transaction;
  - (5) Information as to whether the transaction was a sale, gift or other transaction; and
  - (6) Signed acknowledgement forms required, pursuant to subsection 41-37.4(c), of a purchaser or recipient of pepper spray.
- (c) When displaying or storing pepper sprays at a designated place of business, the licensee shall display or store the pepper sprays at a location that is not within the reach of the general public and shall make a sale of pepper spray only upon request and only to an adult.
- (d) The licensee or an adult employee of the licensee shall be present during all hours of operation of each designated place of business of the licensee; provided that if the pepper spray is in a locked cabinet inaccessible to minor employees, no adult employee need be present at the place of business.
- (e) The licensee shall be responsible for the legal sale, distribution, and proper storage of any pepper spray under the licensee's control or at any one of the licensee's designated place of business.

(Added by Ord. 95-49; Am. Ord. 96-77)

#### **Sec. 41-37.6 Suspension or revocation of license.**

If the department has probable cause to believe that a licensee has violated any provision of this article, the license may be suspended by the director of finance. If the licensee is not convicted, then the director of finance shall remove any suspension placed on the license. If the licensee is convicted, then the license shall be revoked by the director of finance.

(Added by Ord. 95-49)

#### **Sec. 41-37.7 Forfeiture.**

Any chemical device under the ownership of or found in the possession of or at the premises of a licensee may be subject to forfeiture to the city in accordance with the provisions of HRS Chapter 712A and if so forfeited, shall be destroyed or, if not destroyed, transferred to the chief of police for use by and

under the control of the department.  
(Added by Ord. 95-49)

**Sec. 41-37.8 Rules.**

The director of finance and the chief of police are authorized to adopt rules in accordance with HRS Chapter 91 necessary to administer and enforce the provisions of this article.  
(Added by Ord. 95-49)

**Sec. 41-37.9 Violation—Penalty.**

Any person who violates any provision of this article shall, upon conviction, be punished by a fine not exceeding \$2,000.00 or by imprisonment not exceeding one year, or by both. In addition to the penalties assessed under this section, upon conviction of any licensee, any license issued under this article shall be suspended or revoked pursuant to the provisions of Section 41-37.6. Each separate prohibited transaction shall be a separate violation.  
(Added by Ord. 95-49)

**Article 38. Inspection Fee for Reconstructed Vehicles**

**Sections:**

- 41-38.1 Definitions.**
- 41-38.2 Inspection fee for reconstructed vehicle.**
- 41-38.3 Repeal.**

**Sec. 41-38.1 Definitions.**

As used in this article, unless the context otherwise requires:  
“Department” means the department of finance.  
“Motorcycle” means the same as the definition of “motorcycle” under HRS Section 291C-1.  
“Reconstructed vehicle” means the same as the definition of “reconstructed vehicle” under HRS Section 286-2.

(Added by Ord. 95-69)

**Sec. 41-38.2 Inspection fee for reconstructed vehicle.**

- (a) The department shall charge the following fees for the inspection of a vehicle for reconstruction:
  - (1) Motorcycle .....\$8.00
  - (2) Vehicle (other than motorcycle).....\$15.00.
- (b) The reconstructed vehicle owner, or the applicant designated by the owner, shall pay the inspection fee established in subdivision (a) prior to the inspection of the reconstructed vehicle. If, however, upon preliminary review, the department determines that an inspection is not required, the inspection fee collected pursuant to this subdivision shall be refunded to the owner or the applicant designated by the owner.
- (c) No additional inspection fee shall be required for the reinspection of any items found to be deficient on the initial inspection of a reconstructed vehicle, if the vehicle is presented for reinspection within 90 days after the date of initial inspection.
- (d) If, after 90 days of the date of initial inspection, a reconstructed vehicle has failed to receive certification, the entire application and inspection process shall be initiated again and the fees established in subdivision (a) shall be charged for inspection.
- (e) All fees collected under this section shall be deposited into the general fund.

(Added by Ord. 95-69; Am. Ord. 97-42)

**Sec. 41-38.3 Repeal.**

Upon the repeal of HRS Section 286-85, this article shall be deemed repealed and shall have no further force or effect.

(Added by Ord. 95-69)

### **Article 39. Panoram Business Regulation\***

[\*Editor's Note: This article will take effect on January 1, 1998. The director of finance shall begin accepting applications no later than December 1, 1997.]

#### **Sections:**

- 41-39.1 Definitions.**
- 41-39.2 Panoram license required for conduct of panoram business.**
- 41-39.3 License application and issuance.**
- 41-39.4 License validity and renewal.**
- 41-39.5 Right to license nontransferable.**
- 41-39.6 License suspension or revocation.**
- 41-39.7 Appeal of director of finance's decision.**
- 41-39.8 Specifications of licensed location.**
- 41-39.9 Inspection of licensed location.**
- 41-39.10 Prohibited acts.**
- 41-39.11 Penalties.**
- 41-39.12 Rules.**

#### **Sec. 41-39.1 Definitions.**

For the purpose of this article:

"Licensed location" means the location at which a panoram business may be conducted under a panoram license.

"Licensee's employee" means a person employed, contracted, or otherwise retained by a panoram licensee to assist in the panoram business at a licensed location. Under this article, a person shall be deemed an "employee" even if contracted or retained by a licensee under other than an employment relationship.

"Panoram" means a device, installed or placed in a booth, which shows to a person inside the booth a film or videotape depicting sexual conduct, sexual excitement, sadomasochistic abuse, or sexual anatomical display. For the purpose of this definition, "sexual conduct," "sexual excitement," and "sadomasochistic abuse" mean the same as defined under HRS Section 712-1210. "Sexual anatomical display" means the display, with less than completely opaque covering, of the human genitals, pubic area, or buttock or the female breast from below the top of the areola.

"Panoram booth" means a booth containing a panoram and intended for occupancy by the person viewing the panoram.

"Panoram business" means a business under which at least one panoram in a booth is made available for viewing by a patron in return for a fee or other consideration charged for activating the panoram, entering the booth, or accessing or remaining on the premises containing the booth.

"Panoram license" or "license" means a license to conduct a panoram business at a specific location.

"Panoram licensee" or "licensee" means the holder of a valid panoram license.

"Viewing area" means an area in a panoram booth where a patron or customer would ordinarily be positioned while watching a film or video viewing device. (Added by Ord. 97-11)

#### **Sec. 41-39.2 Panoram license required for conduct of panoram business.**

- (a) A person may conduct a panoram business at a specific location only if holding a valid panoram license issued under this article.

A panoram licensee may make available at a licensed location no more than the maximum number of panoram booths authorized under the license.

Each location at which a panoram business is conducted shall have a separate license. The license shall at all times be conspicuously posted and maintained at the location.

- (b) A person shall not be deemed as conducting a panoram business if making available for viewing a

panoram in a booth, but charging no fee or other consideration for activating the panoram, entering the booth, or accessing or remaining on the premises containing the booth. A person engaging in that activity, but not a panoram business, at a particular location shall not be subject to the licensure requirement or other provisions of this article. This subsection, however, shall not be construed as exempting the person from all other laws and ordinances applicable to the activity.

(Added by Ord. 97-11)

**Sec. 41-39.3 License application and issuance.**

- (a) A person seeking a panoram license shall file an application with the director of finance. The application shall set forth the following information:
- (1) The proposed location of the panoram business. The location shall be identified by tax map key number, street address, and, if applicable, building unit number;
  - (2) The maximum number of panoram booths proposed to be available at the location;
  - (3) A proposed floor plan showing each panoram booth and the continuous main aisle required under Section 41-39.8; and
  - (4) Any other information required by the director.
- (b) To review an application, the director of finance may request the assistance of the police, fire, building, or other relevant department. Whenever the director requests assistance from a department, its executive head shall comply within the constraints of available resources.  
Upon the request of an authorized city officer or employee to inspect a proposed panoram business location, the license applicant shall allow the inspection.
- (c) The director of finance shall approve the license application if finding that:
- (1) The panoram business will be conducted in a building and at a location complying with this article and applicable zoning, building, and fire prevention ordinances;
  - (2) The panoram business will not be conducted at a location within 300 feet of any boundary of an elementary or secondary school;
  - (3) The floor plan showing each panoram booth and the continuous main aisle will comply with Section 41-39.8;
  - (4) The applicant has not knowingly made any false statement in the license application; and
  - (5) The applicant has not had a panoram license revoked within the two-year period before the filing of the application.
- If finding otherwise, the director shall deny the application.
- (d) The director of finance's decision regarding a license application shall be rendered within 30 days of the filing of the application. If a decision is not rendered within the 30-day period, the application shall be deemed denied.
- (e) A panoram license approval by the director shall be deemed an approval of the information listed in the application pursuant to subsection (a). The approved information shall be regarded as terms and conditions of the license, the compliance with which is required by the licensee.
- (f) The director of finance shall issue the panoram license upon payment by the applicant of a license fee. The license fee amount shall be set by the director.

(Added by Ord. 97-11)

**Sec. 41-39.4 License validity and renewal.**

- (a) A panoram license shall be valid for one year, unless sooner cancelled, suspended, or revoked. The one-year period shall be measured from the date the license was issued or last renewed, as the case may be. When a license is suspended, time shall continue to toll for measuring the period of that license's validity.
- (b) Not more than 60, but not less than 30, days before the expiration of a license, the licensee may apply for renewal. The director of finance shall review the renewal application in the same manner as a new license application.  
The director shall approve the renewal application if finding that:
- (1) The panoram business will continue to comply with the conditions of Section 41-39.3(c)(1), (2), and (3);
  - (2) The applicant has complied with the conditions of Section 41-39.3(c)(4) and (5) with respect to

the renewal application; and

- (3) The license sought to be renewed has not been suspended for a period encompassing its expiration date.

An approved renewal shall be effective on the day after the license's expiration date.

If the director finds noncompliance with subdivision (1), (2), or (3), the renewal application shall be denied.

- (c) The director's decision regarding a renewal application shall be rendered within 30 days of the filing of the application. If a decision is not rendered within the 30-day period, the renewal shall be deemed denied.
- (d) The director of finance shall charge a renewal fee for each license renewal. The renewal fee amount shall be set by the director.  
The licensee whose license is renewed shall pay the fee before the effective date of the renewal. If not paid by that date, the director shall suspend the renewal until the licensee pays the fee.
- (e) A license which is not renewed by its expiration date shall be invalid from the day after that date. If desiring to conduct a panoram business at the location specified in an invalidated license, a person shall be required to apply for and receive a new license.

(Added by Ord. 97-11)

#### **Sec. 41-39.5 Right to license nontransferable.**

- (a) The right to a panoram license shall not be transferred by the licensee to another person.
- (b) A prohibited "transfer of the right to a license" shall be deemed to have occurred if, before expiration of the license:
  - (1) The license is sold or otherwise conveyed by the licensee to another person;
  - (2) The panoram business authorized by the license is sold or otherwise conveyed by the licensee to another person;
  - (3) The location at which the panoram business may be conducted under the license:
    - (A) Is sold, leased, subleased, assigned, or rented by the licensee to another person; and
    - (B) Becomes unavailable to the licensee for the conduct of the panoram business;or
  - (4) The licensee changes at least a majority interest in its ownership by other than will or intestate succession.
- (c) A licensee who intends to engage in an act described under subsection (b) shall notify the director of finance before executing the act. After receipt of the notification, the director shall cancel the license. The cancellation shall be effective on the date of execution of the act, unless the licensee requests an earlier date.

(Added by Ord. 97-11)

#### **Sec. 41-39.6 License suspension or revocation.**

- (a) The director of finance may suspend or revoke a panoram license if finding that at least one of the following conditions exists:
  - (1) The license was procured by false representation in the license issuance or renewal application;
  - (2) The building or parcel where the panoram business is conducted does not comply with this article or applicable zoning, building, and fire prevention ordinances;
  - (3) The right to the license has been transferred in violation of Section 41-39.5;
  - (4) The licensee or licensee's employee has knowingly committed a violation of this article; or
  - (5) The licensee or licensee's employee has knowingly conducted the panoram business in a manner contrary to a term or condition of the license.

Except as otherwise provided under subsection (b), a license shall be suspended or revoked after at least 20 days' notice to the licensee.

- (b) The director of finance may immediately suspend or revoke a panoram license if finding that a condition under subsection (a) constitutes an immediate threat of serious personal injury or property damage. The notice of immediate suspension or revocation shall identify the basis for and facts supporting the director's decision.
- (c) The director of finance may reinstate a suspended license when the condition for the suspension has

been corrected. No fee shall be charged the licensee for a reinstatement.

The director of finance shall not reinstate a revoked license, but the person who held the revoked license may apply for a new license after two years from the revocation, except as provided for in subsection (d).

- (d) The director of finance shall permanently revoke the panoram license of a panoram licensee who has been convicted of violating this article three times.

(Added by Ord. 97-11)

#### **Sec. 41-39.7 Appeal of director of finance's decision.**

- (a) Any person aggrieved by the director of finance's decision to deny, suspend, or revoke a license may appeal. The person shall appeal by filing a notice with the director within 10 days of receiving the notice of the decision.

For the purpose of this subsection, a decision to "deny a license" includes the denial of an application for a new or renewed license.

- (b) The appeal shall be subject to the contested case procedures of HRS Chapter 91 and heard by a hearing officer appointed by the director of finance. The director shall appoint as the hearing officer a city executive branch officer or employee who did not participate in the appealed decision.

(Added by Ord. 97-11)

#### **Sec. 41-39.8 Specifications of licensed location.**

- (a) Except as provided under subsection (c), the interior of a licensed location shall be arranged so that each panoram booth is entered from a continuous main aisle at least six feet wide.

A panoram booth shall have no entrance other than the one from the main aisle.

- (b) The viewing area in each panoram booth must be visible from a continuous main aisle and must not be obscured by any curtain, door, wall or other enclosure at the entrance to the panoram booth. The obstruction of the viewing area by a chair or seat complying with subsection (d) shall not be a violation of this subsection.

- (c) This subsection shall apply to the minimum aisle width of a licensed location which was used in the panoram business on April 30, 1997\* and became subject to a license issued under this article on January 1, 1998. [\*Editor's Note: "April 30, 1997" is substituted for "the effective date of this ordinance."]

As required under subsection (a), the interior of the licensed location shall be arranged so that each panoram booth is entered from a continuous main aisle.

If the aisle was at least six feet wide on April 30, 1997,\* the aisle shall remain at least six feet wide in accordance with subsection (a).

If the aisle was less than six feet wide on April 30, 1997,\* the aisle may remain at that width as long as:

- (1) The licensee maintains a valid license for the location; and
- (2) The aisle is in compliance with applicable building and fire prevention ordinances.

- (d) A chair or other seat in a panoram booth shall not provide a seating surface of more than 18 inches on any side. A leg of or support for the chair or seat shall not have a diameter of more than three inches.

A panoram booth shall not contain more than one chair or seat.

- (e) The entire floor of a panoram booth shall be level with the continuous main aisle.
- (f) Illumination within a panoram booth shall be sufficient to enable the determination of the number of persons occupying a booth by a person looking inside from the booth's entrance.
- (g) A sign stating the following shall be conspicuously posted and permanently maintained on the interior and exterior of each panoram booth:

Occupancy of this booth is limited to only one person at any time. Violators are subject to criminal prosecution, civil fine, or both under Chapter 41, Article 39, Revised Ordinances of Honolulu 1990, as amended.

The sign's letters and numerals shall be on a contrasting background and no smaller than three-fourths inch in height.

- (h) A licensed location shall not be equipped with a system or device capable of warning a person

occupying a panoram booth that a police officer or other city officer or employee is approaching or has entered the licensed location.

(Added by Ord. 97-11)

**Sec. 41-39.9 Inspection of licensed location.**

A licensee or licensee's employee shall allow a police officer or other authorized city officer or employee to inspect the licensed location during its business hours.

(Added by Ord. 97-11)

**Sec. 41-39.10 Prohibited acts.**

(a) A person shall not conduct a panoram business without a valid license.

(b) A licensee or licensee's employee shall not conduct a panoram business in violation of this article, any other ordinance, or a term or condition of the licensee's license.

A licensee or licensee's employee shall not authorize or order another person to conduct a panoram business in violation of this article, any other ordinance, or a term or condition of the licensee's license.

(c) A licensee shall not transfer the right to a license in violation of Section 41-39.5;

(d) A licensee or licensee's employee shall not:

(1) Warn a person occupying a panoram booth that a police officer or other city officer or employee is approaching or has entered the licensed location;

(2) Show in a panoram booth any film or videotape which promotes pornography or pornography for minors contrary to HRS Chapter 712, Part II;

(3) Lock any door to a public area at the licensed location during business hours; or

(4) Allow a person to violate subsection (e), (f), or (g).

(e) A person under 18 years of age shall not enter or remain in a licensed location.

(f) More than one person shall not occupy a panoram booth at the same time.

(g) A person shall not stand or kneel on any seating surface in a panoram booth.

(Added by Ord. 97-11)

**Sec. 41-39.11 Penalties.**

A person who violates a provision of this article or term or condition of a panoram license shall be:

(1) Guilty of a misdemeanor;

(2) Punishable by a maximum \$1,000.00 civil fine imposed in accordance with applicable state law; or

(3) Subject to both the criminal penalty of subdivision (1) and civil fine of subdivision (2).

(Added by Ord. 97-11)

**Sec. 41-39.12 Rules.**

The director of finance may adopt rules in accordance with HRS Chapter 91 to implement this article.

(Added by Ord. 97-11)

**Article 40. Lap Dancing Establishments**

**Sections:**

**41-40.1 Definitions.**

**41-40.2 Admission restrictions.**

**41-40.3 Prohibition of access to and common wall with a liquor selling establishment.**

**41-40.4 Prohibited activities.**

**41-40.5 Owner or responsible managing agent required on premises.**

**41-40.6 Penalty—Absolute liability.**

## **41-40.7 Enforcement.**

### **Sec. 41-40.1 Definitions.**

For the purposes of this article:

“Dancer” means a person who lap dances in a lap dancing establishment for compensation or remuneration from either the establishment or a customer, including tips or gratuities, whether or not the person is an employee of the establishment.

“Intimate part” means the male or female genitalia, pubic area, anus, or buttock and, in the case of a female, the breast below the top of the areola.

“Lap dance” and “lap dancing” mean a form of live adult entertainment in which a dancer entertains a customer while the dancer is positioned directly above or straddling the customer.

“Lap dancing establishment” means an establishment at which lap dancing is provided for customers and which is not subject to licensure under HRS Chapter 281.

“Owner of a lap dancing establishment” means any person or entity, including but not limited to any individual, partnership, or corporation, with a controlling ownership interest in the business operating the lap dancing establishment. A person shall not be deemed an “owner” merely because of an ownership interest in the land upon or structure in which a lap dancing establishment is operated.

“Responsible managing agent” means an individual who is authorized by the owner of a lap dancing establishment to oversee the operations of the establishment.

(Added by Ord. 98-18)

### **Sec. 41-40.2 Admission restrictions.**

(a) A lap dancing establishment shall not admit into the establishment any person under 21 years of age during business hours; provided that:

- (1) The admission of a person under 21 years of age shall not be deemed a violation of this subsection if, in admitting the person, the personnel of the lap dancing establishment were misled by the appearance of the person and by the person’s personal identification meeting the standards of subsection (c) into believing in good faith that the person was at least 21 years of age; and
- (2) The admission of an employee of the establishment who is under 21, but at least 18, years of age shall be allowed.

The owner and any responsible managing agent of the lap dancing establishment shall be deemed the violator when a person is admitted in violation of this subsection.

(b) A person under 21 years of age shall not enter a lap dancing establishment unless the person is an employee of the establishment and at least 18 years of age.

(c) A lap dancing establishment shall, for the purpose of identifying and verifying the ages of customers, use an official state driver’s license, a military identification card, or other form of official government identification containing a photograph identifying the individual. Such documents shall be unaltered, undamaged and laminated. All documents shall be examined carefully. School identification cards, expired documents of any kind, cards with such phrases as “information provided by applicant” or the like, identification cards issued for the purposes of check cashing or other identification cards not issued by a government agency, shall be unacceptable.

(d) The owner or responsible managing agent of a lap dancing establishment shall post a notice, at each entrance to the establishment available to the public during business hours, that:

- (1) States no customer under 21 years of age will be admitted to the establishment;
- (2) Refers to this article and states the maximum penalty for a customer who enters in violation of the age restriction; and
- (3) Is clearly visible and legible to prospective customers prior to their entry into the establishment. Every day during which the required sign is not posted or not otherwise in compliance with this subsection shall be deemed a separate violation.

(Added by Ord. 98-18)

### **Sec. 41-40.3 Prohibition of access to and common wall with a liquor selling establishment.**

(a) For the purpose of this section, a “liquor selling establishment” means an establishment licensed by

the liquor commission to sell liquor.

- (b) Except as otherwise provided under this subsection, a lap dancing establishment shall not have an entrance or exit leading directly to or from a liquor selling establishment. The entrance or exit of a lap dancing establishment shall be deemed “leading directly to or from a liquor selling establishment” if no common area exists between the entrance or exit of the lap dancing establishment and the entrance or exit of the liquor selling establishment. “Common area” means an area outside either establishment and usable by a member of the general public or invitee to the structure containing the establishments.

A lap dancing establishment in operation on May 21, 1998,\* but in noncompliance with this subsection on that date, may continue in noncompliance for 180 days from that date. After the 180th day, the lap dancing establishment shall be in violation of this subsection if still having an entrance or exit leading directly to or from a liquor selling establishment.

- (c) Except as otherwise provided under subdivision (1) or (2), a lap dancing establishment shall not have a common wall with a liquor selling establishment. A “common wall” means a wall immediately between a lap dancing establishment and a liquor selling establishment.

(1) A lap dancing establishment in operation on May 21, 1998,\* but in noncompliance with this subsection on that date, may continue in noncompliance for two years from that date. After the two-year period, the lap dancing establishment shall be in violation of this subsection if still having a common wall with a liquor selling establishment, unless the exception under subdivision (2)(B) applies. While operating in noncompliance during the two-year period, the lap dancing establishment shall not expand its lap dancing operation beyond the premises of the establishment as existing on May 21, 1998.\* [**\*Editor’s Note:** “May 21, 1998” is substituted for “the effective date of this ordinance”.]

- (2) (A) A lap dancing establishment in compliance with this subsection on May 21, 1998\* shall not become in violation of this subsection if, subsequent to that date, a liquor selling establishment under different ownership locates or expands next to the lap dancing establishment causing the sharing of a common wall;
- (B) A lap dancing establishment in noncompliance with this subsection on May 21, 1998,\* but coming in compliance within two years from that date, shall not become in violation of this subsection if, subsequent to compliance, a liquor selling establishment under different ownership locates or expands next to the lap dancing establishment causing the sharing of a common wall; and
- (C) A lap dancing establishment which commences operation after May 21, 1998\* in compliance with this subsection shall not become in violation of this subsection if, subsequent to commencement, a liquor selling establishment under different ownership locates or expands next to the lap dancing establishment causing the sharing of a common wall.

A liquor selling establishment locating or expanding next to a lap dancing establishment shall be deemed under “different ownership” if none of the ownership interest in the liquor selling establishment is held, directly or indirectly, by a person holding any ownership interest in the lap dancing establishment.

The exceptions of this subdivision shall not apply in the following situations: when a lap dancing establishment expands its premises to cause the sharing of a common wall with a liquor selling establishment, whether or not under different ownership; when a liquor selling establishment, any ownership interest in which is held by a person holding an ownership interest in a lap dancing establishment, locates or expands next to the lap dancing establishment to cause the sharing of a common wall; and when a liquor selling establishment under different ownership locates or expands next to a lap dancing establishment to cause the sharing of a common wall and, subsequently, a person holding an ownership interest in either establishment acquires an ownership interest in the other establishment.

A lap dancing establishment excepted by this subdivision may continue in noncompliance with this subsection until abandoned, destroyed, stopping all business activity, or ceasing for 30 consecutive days to provide lap dancing. While operating in noncompliance, an

establishment shall not expand its lap dancing operation beyond the premises of the establishment as existing on May 21, 1998,\* the date of compliance, or the date of operation commencement, as applicable. After a lap dancing establishment is abandoned or destroyed, stops all business activity, or ceases for 30 consecutive days to provide lap dancing, it may commence lap dancing operation again only if complying with this subsection and other provisions of this article. [\*Editor's Note: "May 21, 1998" is substituted for "the effective date of this ordinance".]

- (d) The owner of a lap dancing establishment in violation of this section shall be deemed the violator. Every day during which the establishment is in violation shall be deemed a separate violation.  
(Added by Ord. 98-18)

**Sec. 41-40.4 Prohibited activities.**

- (a) The following prohibitions shall apply in a lap dancing establishment:
- (1) A dancer shall not touch, with any clothed or unclothed intimate part of the dancer, any clothed or unclothed body part, including intimate part, of a customer;
  - (2) A dancer shall not touch, with any other clothed or unclothed body part of the dancer, any clothed or unclothed intimate part of a customer;
  - (3) A customer shall not touch, with any clothed or unclothed intimate part of the customer, any clothed or unclothed body part, including intimate part, of a dancer; and
  - (4) A customer shall not touch, with any other clothed or unclothed body part of the customer, any clothed or unclothed intimate part of a dancer.

The prohibitions shall apply at any time in the lap dancing establishment, even when the dancer is not lap dancing for the customer.

- (b) A person under 21 years of age shall not lap dance in any lap dancing establishment.  
(c) A person shall not lap dance in a room within a lap dancing establishment unless the room complies with the following:
- (1) The room entrance does not have a door, partition, screen, curtain, or other opaque, transparent, meshed, or perforated covering; and
  - (2) The entire interior of the room is visible at all times from the room entrance.
- (d) The owner or responsible managing agent of a lap dancing establishment shall not direct or allow a person to commit a violation of this section.

(Added by Ord. 98-18)

**Sec. 41-40.5 Owner or responsible managing agent required on premises.**

A lap dancing establishment shall have an owner or responsible managing agent on the premises of the establishment at all times during which it is open for business.

The owner of a lap dancing establishment in violation of this section shall be deemed the violator. Every business day during which the establishment is in violation shall be deemed a separate violation.

(Added by Ord. 98-18)

**Sec. 41-40.6 Penalty—Absolute liability.**

- (a) A person who violates any provision of this article shall be guilty of a violation as defined under and punishable by the State Penal Code.  
(b) The council intends that a person bear absolute liability for any violation of this article.

(Added by Ord. 98-18)

**Sec. 41-40.7 Enforcement.**

- (a) There shall be provided for use by a police officer a form of summons or citation for citing, not physically arresting, an alleged violator of this article. The form and content of the summons or citation shall be as adopted or prescribed by the administrative judge of the district court, designed to include all information necessary under the laws and rules of the State of Hawaii and City and County of Honolulu, and commensurate with the form of other summons or citations used in modern methods of arrest.

Every summons or citation shall be consecutively numbered and each carbon copy shall bear the

number of its respective original.

- (b) A police officer may arrest, without warrant, an alleged violator of this article by issuing the summons or citation in accordance with this section. Nothing in this section shall be construed as barring a police officer from initiating prosecution by penal summons, complaint, warrant, or other judicial process as is permitted by statute or rule of court.

A police officer making an arrest for an alleged violation may take the name and address of the alleged violator and shall issue to the alleged violator the summons or citation. The summons or citation shall direct the alleged violator to answer at a place and time provided in the summons or citation.

When a summons or citation is issued, the original shall be given to the alleged violator; provided that the administrative judge of the district court may prescribe the giving of a carbon copy to the alleged violator and other disposition of the original.

(Added by Ord. 98-18)

## **Article 41. Nightclubs**

### **Sections:**

**41-41.1 Definitions.**

**41-41.2 Nonalcoholic nightclubs—Collocation with liquor establishment.**

**41-41.3 Restriction on operation of teenage nightclubs during certain hours.**

**41-41.4 Regulations applicable to nude dancing nightclubs.**

**41-41.5 Responsible managing agent.**

**41-41.6 Security guards on premises.**

**41-41.7 Financial records.**

**41-41.8 Teenage nightclub that is also a nude dancing nightclub or lap dancing establishment.**

**41-41.9 Criminal penalties—Enforcement.**

**41-41.10 Severability.**

### **Sec. 41-41.1 Definitions.**

For the purposes of this article, the following terms shall have the following respective meanings:

“Adult” means a person who is 18 years of age or older.

“Building” means the same as that term is defined in Chapter 21.

“Commercial business establishment” does not include:

(1) Any nonprofit corporation or other nonprofit organization; or

(2) Any university, high school, intermediate or middle school, or elementary school,

which sponsors or provides facilities on an irregular basis for dances or socials.

“Common ownership” between two establishments or properties means that one or more of the direct or indirect owners of one of the establishments or properties is a direct or indirect owner of the other establishment or property.

“Common wall” means a wall between two establishments or a ceiling or roof of one establishment that serves as a floor of the other establishment.

“Exotic dancer” means a person who performs or entertains in the nude at a nude dancing nightclub. The term includes any such person, whether compensated or uncompensated, and includes patrons participating in a contest or receiving instruction in the art of nude dancing.

“Intoxicating liquor” means alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine; and also includes, in addition to the foregoing, any spiritous, vinous, malt or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one percent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes.

“Liquor” means intoxicating liquor.

“Liquor establishment” means an establishment licensed by the Honolulu liquor commission to sell liquor.

“Minor” means any person who has not attained the age of 18 years.

“Nude” means unclothed or in such attire as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola.

“Nude dancing nightclub” means any commercial business establishment at which one or more exotic dancers perform for or provide entertainment to patrons. The term shall not include any establishment for which a liquor license has been issued, any “lap dancing establishment” as defined in Section 41-40.1 or any theatre.

“Owner of a teenage nightclub,” “owner of a nude dancing nightclub” or “owner” means any person or entity, including but not limited to any individual, partnership, or corporation, with a controlling ownership interest in the business operating the teenage nightclub, the nude dancing nightclub, or either a teenage nightclub or nude dancing nightclub, as the context dictates. A person shall not be deemed an “owner” merely because of an ownership interest in the land upon or structure in which a nightclub is operated.

“Premises” includes the interior of the nude dancing nightclub or teenage nightclub, any parking lot or yard appurtenant to either, or any other business premises under common ownership, including common lease ownership, with the nude dancing nightclub or teenage nightclub and located in the same building as the nude dancing nightclub or teenage nightclub. The term does not, however, include any establishment to which a license has been issued by the Honolulu liquor commission.

“Restaurant” means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to patrons for compensation and which has suitable kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least 30 percent of the establishment’s gross revenue must be derived from the sale of foods. For the purposes of this definition, the term “foods” does not include beverages. This definition is derived from the definition of “restaurant” in the rules of the Honolulu liquor commission and shall be interpreted consistently with the interpretation given to the term by the Honolulu liquor commission.

“Teenage nightclub” means a commercial business establishment regularly engaged in the business of a nightclub: (1) at which live or recorded music is regularly played; (2) at which a dance floor is provided for patrons; and (3) which is advertised or promoted by the establishment, the owner, a responsible managing agent or an employee of the establishment, or by any other person pursuant to the direction or request of any of the foregoing, in such a manner as to attract or otherwise solicit minors, high school students, teenagers or similar groups composed principally of minors. The term shall not include any establishment for which a liquor license has been issued, any restaurant, or any dance school.

A minor shall be deemed “unaccompanied” when the minor is not accompanied by a parent or guardian of the minor or by an adult person authorized by such parent or guardian to accompany the minor.

(Added by Ord. 99-46)

**Sec. 41-41.2 Nonalcoholic nightclubs—Collocation with liquor establishment.**

- (a) During the hours of operation of any teenage nightclub or any nude dancing nightclub, no person may possess or consume any intoxicating liquor on the premises of the establishment.
- (b) During the hours of operation of any teenage nightclub or any nude dancing nightclub, no security guard, responsible managing agent or employee of the establishment shall knowingly permit a patron to enter the establishment or its premises in possession of intoxicating liquor or to consume intoxicating liquor in the establishment or on the premises of the establishment.
- (c) During the hours of operation of any teenage nightclub or any nude dancing nightclub, no security guard, responsible managing agent or employee of the establishment shall knowingly permit any person in an obvious state of intoxication to enter the establishment or its premises.
- (d) No person shall provide, or contract or otherwise arrange, on behalf of a teenage nightclub or nude dancing nightclub, for the provision of, intoxicating liquor on the premises of the establishment to patrons or anticipated patrons of the teenage nightclub or nude dancing nightclub.
- (e) Except as otherwise provided under this subsection, a teenage nightclub or a nude dancing nightclub

shall not have an entrance or exit leading directly to or from a liquor establishment. The entrance or exit of a teenage nightclub or nude dancing nightclub shall be deemed “leading directly to or from a liquor establishment” if no common area exists between the entrance or exit of the teenage nightclub or nude dancing nightclub and the entrance or exit of the liquor establishment. “Common area” means an area outside either establishment and usable by a member of the general public or invitee to the structure containing the establishments.

A teenage nightclub or nude dancing nightclub in operation on August 2, 1999,\* but in noncompliance with this subsection on that date, may continue in noncompliance for 180 days from that date. After the 180th day, the teenage nightclub or nude dancing nightclub shall be in violation of this subsection if still having an entrance or exit leading directly to or from a liquor establishment. [\*Editor’s Note: “August 2, 1999” is substituted for “the effective date of this ordinance”.]

- (f) Except as otherwise provided for below a teenage nightclub or nude dancing nightclub shall not have a common wall with, or be located in the same building as, a liquor establishment.

A teenage nightclub or nude dancing nightclub in operation on August 2, 1999,\* but in noncompliance with this subsection on that date, may continue in noncompliance for two years from that date. After the two-year period, the teenage nightclub or nude dancing nightclub shall be in violation of this subsection if still having a common wall with a liquor establishment, or being located in the same building. While operating in noncompliance during the two-year period, the teenage nightclub or nude dancing nightclub shall not expand the teenage nightclub or nude dancing nightclub operation beyond the establishment as existing on August 2, 1999.\*

The exception provided for above shall not apply in the following situations: when a teenage nightclub or nude dancing nightclub expands its premises to cause the sharing of a common wall with a liquor establishment, whether or not under different ownership; when a liquor establishment, any ownership interest in which is held by a person holding an ownership interest in a teenage nightclub or nude dancing nightclub, locates or expands next to the teenage nightclub or nude dancing nightclub to cause the sharing of a common wall; and when a liquor establishment under different ownership locates or expands next to a teenage nightclub or nude dancing nightclub to cause the sharing of a common wall and, subsequently, a person holding an ownership interest in either establishment acquires an ownership interest in the other establishment.

A teenage nightclub or nude dancing nightclub excepted by this subdivision may continue in noncompliance with this subsection until abandoned, destroyed, stopping all business activity, or ceasing for 30 consecutive days to operate as a teenage nightclub or a nude dancing nightclub, as the case may be. While operating in noncompliance, an establishment shall not expand its teenage nightclub or nude dancing nightclub operation beyond the premises of the establishment as existing on August 2, 1999,\* the date of compliance, or the date of operation commencement, as applicable. After a teenage nightclub or a nude dancing nightclub is abandoned or destroyed, stops all business activity, or ceases for 30 consecutive days to operate as a teenage nightclub or a nude dancing nightclub, as the case may be, it may commence operation as a teenage nightclub or nude dancing nightclub again only if complying with this subsection and the other provisions of this article.

- (g) (1) The owner of a teenage nightclub or nude dancing nightclub that is in violation of subsection (e) or (f) shall be deemed the violator. Every day during which the establishment is in violation of subsection (e) or (f) shall be deemed a separate violation.
- (2) Any person violating subsection (a), (b), (c) or (d) shall be fined not less than \$100.00 and not more than \$500.00 for each violation. Any owner violating subsection (e) or (f) shall be fined not less than \$250.00 and not more than \$1,000.00 for each violation.

(Added by Ord. 99-46)

### **Sec. 41-41.3 Restriction on operation of teenage nightclubs during certain hours.**

- (a) (1) No person shall operate a teenage nightclub between the hours of 10:00 p.m. and 6:00 a.m.
- (2) The prohibition of subdivision (1) shall not preclude the premises from being used for other permitted purposes between 10:00 p.m. and 6:00 a.m., provided the responsible managing agent of the nightclub removes or causes the removal of all minors from the nightclub at 10:00 p.m. and thereafter does not admit or allow the admission of any minor into the nightclub.
- (3) The admission of a minor shall not be deemed a violation of this subsection if, in admitting the

minor, the personnel of the establishment are misled by the appearance of the minor and the minor's personal identification meeting the standards of Section 41-41.4(d) into believing in good faith that the minor was an adult.

- (b) Any owner, responsible managing agent or other person operating a teenage nightclub in violation of subsection (a) shall be fined not less than \$250.00 and not more than \$1,000.00 for each violation. Each day during which a teenage nightclub is operated in violation of subsection (a) shall be deemed a separate violation.

(Added by Ord. 99-46)

**Sec. 41-41.4 Regulations applicable to nude dancing nightclubs.**

- (a) The regulations provided in this section shall apply to any nude dancing nightclub, as that term is defined in Section 41-41.1, regardless of the hours of operation of the establishment.
- (b) A nude dancing nightclub shall not admit into the establishment any person under 21 years of age during business hours; provided that:
  - (1) The admission of a person under 21 years of age shall not be deemed a violation of this subsection if, in admitting the person, the personnel of the nude dancing nightclub were misled by the appearance of the person and by the person's personal identification meeting the standards of subsection (d) into believing in good faith that the person was at least 21 years of age; and
  - (2) The admission of an employee of the establishment who is under 21, but at least 18 years of age shall be allowed.

Any responsible managing agent of the nude dancing nightclub and any employee of the nightclub screening a person for entry into the nightclub shall be deemed the violator when a person is admitted in violation of this subsection.

- (c) A person under 21 years of age shall not enter a nude dancing nightclub during its business hours unless the person is an employee of the establishment and at least 18 years of age.
- (d) A nude dancing nightclub shall, for the purpose of identifying and verifying the ages of patrons, use an official state driver's license, a military identification card, or other form of official government identification containing a photograph identifying the individual. Such documents shall be unaltered, undamaged and laminated. All documents shall be examined carefully. School identification cards, expired documents of any kind, cards with such phrases as "information provided by applicant" or the like, identification cards issued for the purposes of check cashing or other identification cards not issued by a government agency, shall be unacceptable.
- (e) Any owner or responsible managing agent of a nude dancing nightclub shall be responsible for posting a notice, at each entrance to the establishment available to the public during its business hours, that:
  - (1) States that no patron under 21 years of age will be admitted to the establishment;
  - (2) Refers to this article and states the maximum penalty for a patron who enters in violation of the age restriction; and
  - (3) Is clearly visible and legible to prospective patrons prior to their entry into the establishment. Every day during which the required sign is not posted or not otherwise in compliance with this subsection shall be deemed a separate violation.
- (f) Any owner or managing agent of a nude dancing nightclub shall be responsible for conducting a training program, similar to the server-training approved by the liquor commission, which provides at least five and a half hours of instruction for managers, doorpersons and beverage servers in the following areas: (1) Proper checking of personal identification and the recognition of unacceptable forms of identification; (2) Identifying and dealing with intoxicated persons; (3) Reviewing liquor laws and rules, and (4) Dangers of driving while intoxicated. Managers, doorpersons and beverage servers must successfully complete the training program every four years.
- (g) The following prohibitions shall apply in a nude dancing nightclub:
  - (1) An exotic dancer shall not touch, with any clothed or unclothed intimate part of the dancer, any clothed or unclothed body part, including intimate part, of a patron;
  - (2) An exotic dancer shall not touch, with any clothed or unclothed body part of the dancer, any clothed or unclothed intimate part of a patron;

- (3) A patron shall not touch, with any clothed or unclothed intimate part of the patron, any clothed or unclothed body part, including intimate part, of an exotic dancer; and
- (4) A patron shall not touch, with any other clothed or unclothed body part of the patron, any clothed or unclothed intimate part of an exotic dancer.

The prohibitions shall apply at any time in the nude dancing nightclub, even when the dancer is not entertaining or performing for the patron.

- (h) A person under 21 years of age shall not dance as, or be hired, recruited, or asked by any person to dance as, an exotic dancer in any nude dancing nightclub.
- (i) A person shall not perform as an exotic dancer in a room within a nude dancing nightclub unless the room complies with the following:
  - (1) The room entrance does not have a door, partition, screen, curtain, or other opaque, transparent, meshed, or perforated covering; and
  - (2) The entire interior of the room is visible at all times from the room entrance.
- (j) Any responsible managing agent of a nude dancing nightclub shall not permit any exotic dancer to perform, and no exotic dancer shall perform in the nude, in a nude dancing nightclub, except upon a permanently affixed stage at least 18 inches above the immediate floor area. Tables, seats, chairs, or couches shall not constitute a stage for purposes of this article.
- (k) Any owner or responsible managing agent of a nude dancing nightclub shall erect barriers or provide screening sufficient to prevent persons outside the establishment from viewing exotic dancers while performing in the nude.
- (l) Except in any rest room, or in any changing room set aside for exotic dancers and/or other employees to change their clothes, no person, other than an exotic dancer during a performance, shall remain on, or be allowed by any responsible managing agent to remain on, the premises of the nude dancing establishment in the nude. The exception applicable to persons in a rest room or changing room shall only apply if only persons of the same gender are permitted in any such rest room or changing room at the same time, and the interior of the rest room or changing room may not be viewed by persons outside such rest room or changing room.
- (m) Any violation of this section by an owner or responsible managing agent shall be subject to a fine of not less than \$200.00 and not more than \$1,000.00. Any violation of this section by an exotic dancer, a patron or any other person shall be subject to a fine of not less than \$100.00 and not more than \$500.00.

(Added by Ord. 99-46)

#### **Sec. 41-41.5 Responsible managing agent.**

- (a) At all times during the operation of a teenage nightclub or a nude dancing nightclub, the owner thereof shall designate a natural person or persons to act as the responsible managing agent or agents for the establishment. The owner shall maintain a record of the designated responsible managing agent or agents for all times the establishment is in operation. The record shall be maintained for a minimum of two years. If the owner is not a sole proprietor, the owner shall maintain a record of all persons with an equity ownership interest in the owner. Upon the request of any officer of the Honolulu police department, the owner shall provide any of the records required by this subsection.
- (b) At all times during the operation of a teenage nightclub or a nude dancing nightclub:
  - (1) The owner shall post the name of the owner; and
  - (2) The responsible managing agent or agents responsible for management of the establishment at the time shall post their name or names and title.

The information required to be posted shall be posted in a conspicuous location in the establishment within five feet of each entrance through which patrons of the establishment may enter the establishment. The name or names shall be posted in letters at least two inches in height, in a color that contrasts with the wall or other background on which they are posted.
- (c) An owner may be designated as a responsible managing agent.
- (d) (1) The failure of the owner to designate a responsible managing agent or to maintain records of the designation or other records as required under subsection (a) shall be punishable by a fine of not less than \$250.00 and not more than \$1,000.00. Each day during which a violation continues shall be deemed a separate violation.

- (2) Any owner or responsible managing agent who fails to comply with subsection (b) shall be fined not less than \$100.00 and not more than \$250.00. Each day during which a violation continues shall be deemed a separate violation.

(Added by Ord. 99-46)

**Sec. 41-41.6 Security guards on premises.**

The responsible managing agent of any teenage nightclub or nude dancing nightclub shall ensure that security guards, licensed pursuant to HRS Chapter 463, are on the premises of the nightclub during all hours of operation. At least one such guard shall be on duty within the nightclub and at least one such guard shall be on duty outside of the nightclub on the grounds or in the parking area of the nightclub. Any person violating this section shall be subject to a fine of not less than \$100.00 and not more than \$500.00. Each day during which a violation continues shall be deemed a separate violation.

(Added by Ord. 99-46)

**Sec. 41-41.7 Financial records.**

The owner of any commercial business establishment meeting the definition of “teenage nightclub” in Section 41-41.1, but claiming to be excepted from that definition because the establishment is a restaurant shall maintain adequate records to demonstrate that the establishment meets the definition of “restaurant” in that section, including the requirement that at least 30 percent of the establishment’s gross revenues are derived from the sale of foods. The failure to maintain such records shall be grounds for treating an establishment as a teenage nightclub under this article.

(Added by Ord. 99-46)

**Sec. 41-41.8 Teenage nightclub that is also a nude dancing nightclub or lap dancing establishment.**

- (a) Any establishment that operates as both a teenage nightclub and a nude dancing nightclub shall comply with the requirements applicable to both teenage nightclubs and nude dancing nightclubs.
- (b) Any establishment that operates as both a teenage nightclub and a lap dancing establishment shall comply with the requirements applicable to both teenage nightclubs and lap dancing establishments, including the amortization provisions applicable to both uses; provided that if the amortization provisions applicable to teenage nightclubs and to lap dancing establishments are inconsistent, the stricter provision shall apply.

(Added by Ord. 99-46)

**Sec. 41-41.9 Criminal penalties—Enforcement.**

- (a) The penalties provided in this article are criminal penalties and the article shall be enforced by the Honolulu police department.
- (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.

(Added by Ord. 99-46)

**Sec. 41-41.10 Severability.**

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

(Added by Ord. 99-46)

**Article 42. Alarm Systems**

**Sections:**

- 41-42.1 Definitions.**  
**41-42.2 Alarm user permits required.**

- 41-42.3 Multiple alarm systems.**
- 41-42.4 Response to alarm—Determination of false alarm.**
- 41-42.5 Review of false alarm determinations.**
- 41-42.6 Service charge assessment for false alarms.**
- 41-42.7 Failure to obtain permit for alarm system—Violation.**
- 41-42.8 Deposit of fees, charges, and fines in special account.**
- 41-42.9 Annual report.**
- 41-42.10 Failure to provide written notification—Violation.**

**Sec. 41-42.1 Definitions.**

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

“Activation” of an alarm system means the emission of an audible or silent alarm or signal generated by an alarm system, including the transmission of a message by means of an automatic telephone dialer.

“Alarm company” means the business of any individual, partnership, corporation, or other entity engaged in selling, leasing, or installing any alarm system or in causing any alarm system to be sold, leased, or installed in or on any building, structure, facility, or premises.

“Alarm system” means any single device or assembly of equipment designed to signal the occurrence of an emergency, including illegal entry or other activity requiring immediate attention, to which the police department is expected to respond or does respond, and that emits an audible alarm or transmits a signal or message, including a telephonic message, when activated. The term does not include alarms installed in motor vehicles or fire alarms.

“Alarm system coordinator” means a subordinate, person, or vendor designated by the chief of police to administer this article.

“Alarm user” means any person owning or leasing an alarm system, or on whose premises an alarm system is maintained for the protection of such premises.

“Audible alarm” means any alarm system that emits a sound when activated.

“Automatic telephone dialer” means any alarm system that, when activated, dials a programmed telephone number, and when the telephone is answered, plays a recorded message informing the listener of an unauthorized entry or unlawful act.

“Chief of police” means the chief of police of the city, or the chief’s authorized subordinates.

“Common cause” means a common technical difficulty or malfunction which causes an alarm system to generate a series of false alarms.

“Emergency” means: (1) an unauthorized entry or attempted unauthorized entry into a building, place, or premises, excluding any motor vehicle; or (2) the commission of a crime.

“Emergency service” means any law enforcement, fire, or medical service.

“False alarm” means any alarm activation that is communicated to an emergency service but that is not in response to an actual or threatened emergency. False alarms include alarm activations caused by mechanical or electronic failure, malfunction, improper installation or maintenance of alarm system equipment, or the negligence of the alarm user, employees, and agents of the alarm user. False alarm shall also include efforts to use an alarm system to summon an emergency service for a purpose other than an emergency. A false alarm shall not include an alarm activation when there is evidence that the activation was the result of a power outage exceeding four hours in length or the result of hurricane, fire, earthquake, or other unusually violent condition of nature or an alarm that is canceled by the alarm user before the police department is dispatched to or arrives at the premises.

“Notice” means written notice, served personally or mailed, addressed to the person to be notified at the person’s last known address. Service of such notice shall be deemed effected upon completion of personal service or upon deposit of such notice in the United States mail.

“Permittee” means the holder of a permit issued under Section 41-42.2.

“Person” means an individual, corporation, partnership, trust, limited liability company, association, organization, or similar entity, but excludes any agency of the federal government or the State of Hawaii.

“Police department” means the Honolulu police department.

“Service charge” means a charge assessed a permittee to offset the city’s cost of responding to a false alarm, and may include the administrative costs of mailing and processing an assessment notice for a false alarm and the prorated share of the city’s cost of administering this article.

(Added by Ord. 01-63; Am. Ord. 12-40, 14-3)

**Sec. 41-42.2 Alarm user permits required.**

- (a) Permit Required. No person shall use an alarm system which is designed to elicit, either directly or indirectly, a police response without first obtaining a permit for such alarm system from the alarm system coordinator. An alarm company shall provide each person purchasing or leasing an alarm system from the alarm company with written notification of the permit required pursuant to this section at the time of sale or not later than 24 hours prior to the installation of the alarm system.
- (b) Permit Issuance. The permit shall be requested on an application form prescribed by the chief of police. An alarm user shall obtain the application form from the alarm system coordinator, provide the information requested on the form, and file the form with the alarm system coordinator. Upon receipt of a completed application form and the fee prescribed in subsection (e), the alarm system coordinator shall issue a permit to the applicant. Permits shall be valid for one year and shall be renewable on an annual basis.
- (c) Transfer of Possession. When the possession of the premises at which an alarm system is maintained is transferred, the person obtaining possession of the premises shall file an application for an alarm user permit within 30 days of obtaining possession of the premises. Alarm user permits are not transferable.
- (d) Reporting Updated Information. Whenever the information provided on the alarm user permit application changes, the correct information shall be provided by the permittee to the alarm system coordinator within 30 days of the change. Each year after the initial issuance of the permit, the alarm system coordinator shall provide each permit holder with a form requesting updated information. The permit holder shall complete and return this form to the alarm system coordinator and pay the renewal fee prescribed in subsection (e).
- (e) Fees. The initial fee for a permit shall be \$15. The fee for renewal of an annual permit shall be \$5.
- (f) Confidentiality. Completed application forms and permits shall be confidential and shall not be made public except to that extent necessary to enforce this article.

(Added by Ord. 01-63; Am. Ord. 14-3)

**Sec. 41-42.3 Multiple alarm systems.**

If an alarm user has one or more alarm systems protecting two or more separate structures having different addresses, a separate permit will be required for each such structure.

(Added by Ord. 01-63)

**Sec. 41-42.4 Response to alarm—Determination of false alarm.**

- (a) Police Response. Whenever an alarm system is activated which results in a response by the police department, the responding police officer shall inspect the area and determine whether an actual or threatened emergency existed at the time of the system's activation, or whether the alarm was a false alarm.
- (b) Notification. If the police officer at the scene of the activated alarm system determines the alarm to be false, the police officer shall make a report of the false alarm. The permittee or, if there is no permittee, an alarm user, shall be notified in writing of each false alarm determination.
- (c) Inspection. At the time of the response, the chief of police shall have the right to inspect any alarm system to which the police department has responded to determine whether the system is being used in conformity with the provisions of this article.

(Added by Ord. 01-63)

**Sec. 41-42.5 Review of false alarm determinations.**

- (a) The alarm system coordinator shall, when requested by a permittee, review the determination by a responding police officer that an alarm was false. The review shall be conducted by the alarm system coordinator only if the permittee requests the review in writing within 10 days of the date on which the false alarm determination was mailed or delivered to the permittee. The written request for review of a false alarm determination shall include the following information:
  - (1) The permittee's name and mailing address;

- (2) Address of the premises at which the alarm system is installed;
  - (3) The date of the alarm being contested;
  - (4) The permit number for the alarm system; and
  - (5) The basis for the permittee's belief that the alarm being contested was not a false alarm.
- (b) The alarm system coordinator shall make a determination on the permittee's request for review within 14 days of receiving the request for review and shall, within seven days thereafter, mail written notice of the coordinator's determination to the permittee at the address supplied in the request for review.
- (Added by Ord. 01-63)

**Sec. 41-42.6 Service charge assessment for false alarms.**

- (a) Any service charge assessed pursuant to this section shall be considered an obligation owed by the permittee to the city and shall be paid within 30 days from the date of receipt of the assessment notice.
- (b) (1) A permittee who installs a new alarm system or reinstalls an alarm system shall not be subject to a false alarm determination for a period of 30 days from the date the alarm system becomes operational. This subdivision shall apply only if the alarm user provides written notice to the alarm system coordinator within 10 days of completion of an alarm system installation or reinstallation. The written notice shall specify the date the installation or reinstallation was completed and, if a reinstallation, shall contain a description of the reinstallation. For the purposes of this subsection, an alarm system is considered to have been reinstalled when a new control panel is installed for the system.
- (2) An alarm user who obtains an initial permit for an alarm system already in operation on April 27, 2002\* shall not be subject to a false alarm determination for the 30-day period immediately following issuance of the permit.
- (3) This subsection shall not apply to any permittee or other alarm user who is delinquent in payment of any service charges assessed or fines imposed pursuant to this article.
- (c) A series of false alarms generated by an alarm system, for which a permit has been issued under this article, as a result of a common cause within any 72-hour period shall be considered a single occurrence of a false alarm for purposes of subsections (d) and (e), provided that:
- (1) Repairs to the alarm system to eliminate the common cause are made before the alarm system generates additional false alarms after the 72-hour period;
  - (2) The alarm user provides documentation of the repairs to the alarm system coordinator; and
  - (3) No additional false alarms are generated as a result of the common cause within the 30-day period immediately following the completion of repairs.
- (d) A service charge shall not be assessed for the first, second and third false alarms activated from any premises within a 12-month period. The fourth false alarm and all false alarms thereafter activated from any premises within a 12-month period shall cause the permittee to be assessed a \$50 service charge per occurrence, provided that an initial fourth false alarm activation within a 12-month period shall be deemed not to have occurred if the alarm user successfully completes an alarm systems operation and maintenance educational program approved by the chief of police.
- (e) Except as provided in subsection (d), the assessment notice for the fourth false alarm and all false alarms thereafter activated from any premises within a 12-month period shall specify that the police department shall be under no duty to respond, and may discontinue responding, to alarms activated from the premises until all unpaid service charges assessed pursuant to this section are paid. Upon receipt of all service charges assessed, police department response to alarm activations at the premises may recommence. In addition, the chief of police, before determining to recommence police response to the premises, may require that a permittee or alarm user submit written proof that its alarm system has been inspected by a licensed contractor subsequent to the most recent false alarm determination. This section shall not apply to panic, duress or holdup alarms.

(Added by Ord. 01-63)

**Sec. 41-42.7 Failure to obtain permit for alarm system—Violation.**

Failure by an alarm user to obtain a permit when required by Section 41-42.2 shall constitute a

violation punishable by a fine of not more than \$100. If, after being cited for a violation of this section, an alarm user fails to obtain a permit under this article within 30 days of the citation, each activation of the alarm system shall be deemed a false alarm and a violation and the alarm user cited shall be liable to pay a service charge of \$50 for each false alarm and \$250 for each violation until a permit is obtained.  
(Added by Ord. 01-63)

**Sec. 41-42.8 Deposit of fees, charges, and fines in special account.**

All monies collected from fees, charges and fines required by this article shall be deposited in a special account in the general fund and shall be used for the administration and enforcement of this article.

(Added by Ord. 01-63)

**Sec. 41-42.9 Annual report.**

No later than 30 days following the first and second anniversary of April 27, 2002,\* [\***Editor's Note:** "April 27, 2002" is substituted for "the effective date of this ordinance".] the chief of police shall submit to the council and the city clerk a comprehensive report of the police department's activities under this article which report shall include at least the following:

- (a) A breakdown of general fund and special account resources assigned to or expended on the administration of this article;
- (b) An accounting of the number of permits issued;
- (c) An accounting of the number of false alarms by category (first, second, third, etc.; residential or commercial, etc.);
- (d) An accounting of the number of false alarm determinations appealed and reviewed, and the disposition of those reviews;
- (e) An accounting of the permit fees received;
- (f) An accounting of the service charges assessed and paid; and
- (g) An accounting of the number of violations/citations for failure to obtain a required permit.

(Added by Ord. 01-63)

**Sec. 41-42.10 Failure to provide written notification—Violation.**

An alarm company that fails to provide written notification of the required permit to the alarm user under Section 41-42.2(a) shall be responsible for the payment of all fines and charges assessed to the alarm user under Section 41-42.7, provided that the citation or notice of violation is provided to the alarm company by the alarm user within 30 days of the notice or citation's issuance.

(Added by Ord. 14-3)

**Article \_\_. City-Owned Streams**

**Sections:**

**41-\_\_.1 Definitions.**

**41-\_\_.2 Regulation of city-owned streams.**

**41-\_\_.3 Penalty.**

**Sec. 41-\_\_.1 Definitions.**

For purposes of this article:

"Camp" or "camping" means the use and occupation of a city-owned stream or city-owned stream riparian zone as a temporary or permanent dwelling place or sleeping place.

"City" means the City and County of Honolulu.

"City-owned" means the city 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, or the stream riparian zone, with claim of ownership, whether the city's interest is in absolute fee or a lesser estate.

"Director" means the director of the department of facility maintenance.

"Dwelling place" means a place used for human habitation as an overnight accommodation, lodging, or shelter on either a temporary or permanent basis.

"Human habitation" means the act of using, occupying or inhabiting a place of lodging or shelter on a permanent or temporary basis as a place of residence or sojourn.

"Sleeping place" means a place used by a person for the purpose of sleeping, where the person is asleep inside a tent, sleeping bag, or some form of temporary shelter or is asleep atop of or covered by materials such as a cot, mat, bedroll, bedding, sheet, blanket, pillow, bag, cardboard or newspapers.

"Stream" 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, canals, 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.

"Stream riparian zone" means the public land area that extends 100 feet away from the edge of the streambank.

"Structure" means anything above existing grade constructed or erected with a fixed location on the ground, or requiring a fixed location on the ground, or attached to something having or requiring a fixed location on the ground.

"Tent" means a collapsible structure consisting of sheets of canvas, fabric or other material attached to or draped over a frame of poles or a supporting rope that has more than one wall.

"Wall" means an upright, vertical or slanted structure, partition or divider serving to enclose, divide, support or protect.

(Added by Ord. 15-39)

#### **Sec. 41-\_\_2 Regulation of city-owned streams.**

- (a) It is unlawful for any person to do the following on any portion of a city-owned stream or city-owned stream riparian zone:
- (1) Camp without a permit;
  - (2) Erect a tent or structure without a permit;
  - (3) Enter into or upon the stream or stream riparian zone if public access has been prohibited by the director and signs indicating the prohibition have been posted; and
  - (4) Engage in any other activities prohibited by the director, if signs indicating the prohibited activities have been posted.
- (b) The director may, by rules adopted pursuant to HRS Chapter 91, prohibit access to specified city-owned streams or city-owned stream riparian zones, or prohibit activities on specified city-owned streams or city-owned stream riparian zones if the director finds it necessary to protect public health, safety, and welfare. When adopting rules, the director shall base decisions on a careful and thorough analysis that balances public safety, stream preservation and management, and rights of the public to access streams.
- (c) No person shall be cited for a violation of this section unless the person engages in conduct prohibited by this section after having been notified by a law enforcement officer that the conduct violates this section.

(Added by Ord. 15-39)

#### **Sec. 41-\_\_3 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. 15-39)