CITY AND COUNTY OF HONOLULU ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF PARKS AND RECREATION

CHAPTER 1

RELATING TO RULEMAKING PROCEEDING, DECLARATORY RULINGS, AND GOVERNMENT RECORDS AND INFORMATION

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SUBCHAPTER 1

GENERAL PROVISIONS

§19-1-1 Scope and purpose. (a) These rules shall apply to all divisions, offices, sections, programs and activities of the department.

(b) The objective of these administrative rules is to establish guidelines and procedures governing the manner in which persons may obtain information from the department; petition for the adoption, amendment, or repeal of rules; or petition for a declaratory order by the director. [Eff DEC 04 2004] (Auth: RCH Sec. 4-105, HRS §91-2) (Imp: HRS Sec. 91-2)

§19-1-2 Definitions. As used in these rules, unless the context otherwise specifically requires:

"Agency" means each state or county board, commission, department or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

"Department" means the department of parks and recreation, City and County of Honolulu.

"Director" means the director of the department of parks and recreation, City and County of Honolulu.

"Person" or "persons" include individual, partnership, corporation, association, or public or private organization of any character other than agencies. [Eff DEC 04 2004] (Auth: RCH §4-105) (Imp: HRS §91-2)

§19-1-3 The department. (a) The principal office of the department is at Kapolei Hale, Kapolei, Hawaii. Unless otherwise specifically provided by law or by direction of the department, all communications to the department shall be sent to the director, Department of Parks and Recreation, 1000 Uluohia Street, Suite 309, Kapolei, Hawaii 96707.

(b) The department office at Kapolei Hale shall be open from 7:45

a.m. to 4:30 p.m. of each workday unless otherwise provided by ordinance, statute or executive order.

(c) The director shall have charge of the department's official records and shall be responsible for the maintenance and custody of the files and records of the department. All orders and other actions of the department shall be authenticated, signed or otherwise authorized by the director or his duly authorized representative.

(d) All documents required to be filed with the department shall be filed in the office of the director within such time limits as prescribed by law or by rules, regulations, or orders of the department.

[Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 2

GOVERNMENT RECORDS AND INFORMATION

§19-1-4 Government records and information. a) The term "government records" as used in this section is defined as in section 92F-3, Hawaii Revised Statutes, and shall include all rules, regulations, written statements of policy or interpretation formulated, adopted or used by the department, all final opinions, rulings and orders and any other material on file for public inspection in the department unless accorded confidential treatment by law.

(b) All government records shall be available for inspection in the department, during established office hours unless public inspection of such records is in violation of any state or federal law, provided that, except where such records are made available for inspection by rule of court, the corporation counsel may determine which records pertain to the preparation or defense of any action or proceeding prior to its commencement, to which the City is or may be a party, or when such records do not relate to a matter in violation of law or their confidential treatment is necessary for the protection of the character, reputation or business of any person.

(c) Government records printed or reproduced by the department shall be given to any person requesting the same and paying the cost including the cost of publication and mailing or reproduction, or in the case of a charge specified by law or by other regulation, such specified charges.

(d) Requests for government information, for permission to inspect

official government records or for copies of government records shall be made in writing to the director and shall be handled with due regard for the policies and procedures of the respective programs, the dispatch of other public duties, and in accordance with chapter 92F, Hawaii Revised Statutes. [Eff DEC 0 4 2004] (Auth: RCH 4-105, HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 3

PROCEDURES FOR RULEMAKING

§19-1-5 Petitions for adoption, amendment, or repeal of rules. (a) Any interested person or any agency may petition the department for the adoption, amendment, modification or repeal of any rule of the department.

(b) The petition of the petitioner shall contain:

(1) A statement of the nature of the petitioner's interest in the rule;

(2) A statement of the reason or reasons in support of the proposed rule, amendment, or repeal, including any facts, views, arguments and data relevant by the petitioner;

(3) A draft or the substance of the proposed rule or amendment, in the case of a petition for adoption or amendment;

(4) The specific section or sections affected by the request;

(5) A statement that the petition is being made pursuant to this section;

(6) The name, address, and telephone number of the petitioner. The department may reject any petition which does not conform to the requirements of this section.

[Eff DEC 0 4 2004] (Auth: RCH 4-105, HRS §§91-2, 91-6) (Imp: HRS §91-6)

§19-1-6 Disposition. (a) The department shall within 30 days following the filing of the petition either deny the petition or initiate the rulemaking procedures in accordance with chapter 91, Hawaii Revised Statutes.

(b) No public hearing, oral argument, or other form of proceedings, shall be held directly on the petition, but if the department determines that a petition discloses sufficient reasons in support of the relief requested to

justify the institution of a public hearing, the procedures to be followed will be as set forth in sections 19-1-10 to 19-1-12.

(c) Without limiting the generality of the foregoing, the department may deny any petition which:

(1) Fails to substantially conform to the requirements of section 19-1-5;

(2) Discloses insufficient reasons justifying the institution of public rulemaking procedures; or

(3) Concerns a matter not within the jurisdiction of the department.

[Eff DEC 04 2004] (Auth: RCH §4-105, HRS §§91-2, 91-6) (Imp: HRS §91-6)

§19-1-7 Notice of determination. The department shall promptly notify the petitioner in writing of its determination either to deny the petition or initiate rulemaking procedures. If the department denies the petition, the department shall state the reasons for the denial in the notice of the petitioner. [Eff DEC 04 2004] (Auth: RCH 4-105, HRS §§91-2, 91-6) (Imp: HRS §91-6)

§19-1-8 Determination final. Unless otherwise provided by law, the petitioner shall have no right to move the department for reconsideration or to seek judicial review for any determination. [Eff DEC 04 2004] (Auth: RCH 4-105, HRS §§91-2, 91-6) (Imp: HRS §91-6)

§19-1-9 Additional facts or supplemental memorandum. The department may require the petitioner to submit additional data and supporting authorities or a memorandum, before proceeding on the petition, the purpose of which is to clarify a specific factual issue, position, or contention which will reasonably aid the department. Failure on the part of the petitioner to furnish data, supporting authorities or memorandum within the time specified in the request shall be deemed to be a withdrawal of the petition. [Eff DEC 04 2004] (Auth: RCH 4-105, HRS §§91-2, 91-6) (Imp: HRS §91-6)

§19-1-10 Notice of proposed rulemaking. (a) When the department proposes to adopt, amend, or repeal an administrative rule, a notice of the proposed rulemaking action will be published, pursuant to section 91-3, Hawaii Revised Statutes, at least once in a newspaper of

general circulation in the county.

(b) The notice shall be published at least 30 days prior to the date set for the public hearing.

(c) The notice shall also be mailed to neighborhood boards and to all persons who have requested advance notice of the department's rulemaking proceedings.

(d) In addition, notice shall be mailed to all persons who make a timely written request to the department for advance notice of a rulemaking hearing.

(e) The notice shall include the following information:

(1) A statement of the substance of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved;

(2) A statement that a copy of the proposed rule to be adopted, amended, or repealed will be mailed to any person who requests a copy, pays the required fees for the copy and the postage, if any, together with a description of where and how the requests may be made;

(3) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be reviewed in person; and

(4) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal; and

(5) Afford all interested persons the opportunity to submit data, views, or arguments, orally or in writing; and

(6) Any other information as requested by section 91-3, Hawaii Revised Statutes. [Eff DEC 04 2004] (Auth: RCH 4-105, HRS §91-3) (Imp: HRS 91-3)

§19-1-11 Conduct of hearing. (a) Each rulemaking hearing shall be presided over by the director or the director's representative. The hearing shall be conducted in such a way as to afford to any interested person a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record. The presiding officer shall have the authority to take all actions necessary for the orderly conduct of the hearing.

(b) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters

specified in the notice of hearing in such order as the presiding officer shall prescribe.

(c) All interested persons shall be given reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing. Every witness shall, before proceeding to testify, state the witness's name, address, and whom the witness represents at the hearing, and shall give such other information respecting the witness's appearance as the presiding officer may request. The presiding officer shall confine the testimony to the questions before the hearing. Every witness shall be subject to questioning by the presiding officer, but cross-examination by private persons shall not be permitted unless the presiding officer expressly permits it.

(d) All interested persons or agencies of the State or counties of the State will be afforded an opportunity to submit during the hearing data, views, or arguments that are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the department within five calendar days following the close of the hearing other comments or recommendations in support of or in opposition to the proposed rulemaking, comments or recommendations or replies thereto will not be accepted unless an original and two copies are filed. The period for filing written comments, or recommendations may be extended by the presiding officer for good cause.

(e) Unless otherwise specifically ordered by the presiding officer, testimony given at a rulemaking hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence to the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, two copies of the exhibits shall be submitted.

(f) A rulemaking hearing shall be held at the time and place set in the notice of hearing, but the hearing may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement of the continuation or adjournment during or at the end of the hearing held at the scheduled time and place. [Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-2) (Imp: HRS § 91-3)

§19-1-12 Department action. At the close of the final public hearing, the presiding officer shall announce the decision, or the date when the decision is intended to be made. [Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-2) (Imp: HRS § 91-3)

§19-1-13 Emergency rulemaking. Notwithstanding the foregoing rules, if the department finds that an imminent peril to public health, safety, or morals or livestock and poultry health requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and states in writing its reason for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period not longer than 120 days without renewal.
[Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-2) (Imp: HRS §91-3)

§19-1-14 Waiver. The requirements for public hearing and for notice thereof may be waived by the mayor when the department, as a condition to receiving federal funds, is required by federal provisions to adopt rules and the department is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted. The department shall make known to the public the proposed adoption, amendment, or repeal of any rule pursuant to this section by publishing in a newspaper of general circulation in this county, at least once prior to the waiver of the mayor, a statement as to the substance of the proposed rule change.
[Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-2) (Imp: HRS §91-3)

§19-1-15 Approval. The adoption, amendment, or repeal of any rule shall be subject to the approval of the mayor as provided for in section 91-3, Hawaii Revised Statutes. [Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-2) (Imp: HRS §§91-2, 91-4)

§19-1-16 Filing and review. Upon approval of the mayor, certified copies of any rules being adopted, amended, or repealed shall be filed with the city clerk. All rules being adopted, amended, or repealed shall take effect as provided in section 91-4, Hawaii Revised Statutes, and shall be subject to review as provided in section 91-4.1, Hawaii Revised Statutes. [Eff DEC 04 2004] (Auth: RCH 4-105, HRS §91-2) (Imp: HRS §§91-2, 91-3, 91-4, 91-4.1)

§19-1-17 No restriction on the department. Nothing contained in this chapter shall be construed to prohibit or restrict the right of the department, sua sponte, from initiating its own rulemaking proceeding on any matter, whether or not disclosed in any petition.
[Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-2) (Imp: HRS §§91-2, 91-3)

SUBCHAPTER 4

PETITION FOR DECLARATORY RULING

§19-1-18 Petition for declaratory ruling. Any interested person may petition the department for the issuance of a declaratory order as to the applicability of any statutory provision administered by the department or of any rule or order of the department.
[Eff DEC 04 2004] (Auth: RCH §4-105, HRS §§91-2, 91-8) (Imp: HRS §§91-2, 91-8)

§19-1-19 Contents of petition. (a) The petition shall contain:
(1) The petitioner's name, address, and telephone number.
(2) Designation of the specific provision, rule, or order in question, together with a statement of the controversy or uncertainty involved.
(3) A complete statement of facts.
(4) A statement of the petitioner's interest and reasons for submitting the petition.
(5) A statement of the petitioner's position or opinion.
(6) Justification and legal arguments supporting the petitioner's position.
(b) Any petition that does not conform to the foregoing requirements may be rejected. [Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-6) (Imp: HRS §§91-2, 91-6)

§19-1-20 Referral to other agencies. Where any question of law is involved, the department may refer the matter to corporation counsel. The department may also obtain the assistance of other agencies when necessary or desirable. [Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-8) (Imp: HRS §§91-6, 91-8)

§19-1-21 Request for additional facts or memoranda of law. The department at any time may require the petitioner to submit additional data and supporting authorities or a memorandum, before proceeding on the petition, the purpose of which is to clarify a specific factual issue, position, or contention which will reasonably aid the department. Failure on the part of the petitioner to furnish data, supporting authorities or memorandum within the time specified in the request shall be deemed to be a withdrawal of the petition. [Eff DEC 04 2004] (Auth: RCH 4-105, HRS §§91-2, 91-6) (Imp: HRS §91-6)

§19-1-22 Director's action on a petition. (a) The department, as expeditiously as possible after the filing of a petition for declaratory ruling, shall either deny the petition in writing stating the reasons for refusing to issue a declaratory ruling, or shall issue a declaratory ruling on the matters contained in the petition. No public hearing, oral argument, or other form of proceedings, shall be held directly on the petition.

(b) The director shall notify the petitioner in writing of the disposition of the petition.

(c) The director may, for good cause, deny the petition and refuse to issue a declaratory ruling. Without limiting what may constitute good cause, the director shall refuse to issue a declaratory ruling when:

(1) The petition fails to conform substantially with section 19-1-19;
(2) The question is speculative or hypothetical and does not involve existing facts, or facts that can reasonably be expected to arise within the next year.
(3) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action in a court of law regarding the same factual and legal circumstances presented in the petition;
(4) The issuance of the declaratory ruling may adversely affect the interests of the City in any litigation that is pending or may reasonably be expected to arise; or
(5) The matter is not within the jurisdiction of the department.

[Eff DEC 04 2004] (Auth: RCH §4-105, HRS §91-8) (Imp: HRS §§91-2, 91-8)

§19-1-23 Applicability of declaratory ruling. A declaratory ruling shall apply only to the factual situation stated in the petition or set forth in

the ruling. A declaratory ruling shall not apply to situations where the facts are different or where there are additional facts. [Eff DEC 04 2004] (Auth: RCH §4-105) (Imp: HRS §§91-2, 91-8)

DEPARTMENT OF PARKS AND RECREATION

THE RULES OF THE DEPARTMENT OF PARKS AND RECREATION
CITY AND COUNTY OF HONOLULU
RELATING TO RULEMAKING PROCEEDING, DECLARATORY
RULINGS, AND GOVERNMENT RECORDS AND INFORMATION

The Rules of the Department of Parks and Recreation relating to rulemaking proceeding, declaratory rulings, and government records and information, which were adopted on September 17, 2004, following a public hearing held on September 1, 2004, after public notice was given on July 16, 2004, in the Honolulu Star Bulletin.

These rules shall take effect ten (10) days after filing with the Office of the City Clerk.

DEPARTMENT OF PARKS AND RECREATION
CITY AND COUNTY OF HONOLULU

W. D. Balfour

WILLIAM D. BALFOUR, JR., Director

APPROVED AS TO FORM AND LEGALITY:

Dawn D. M. Spurlin

DAWN D. M. SPURLIN
Deputy Corporation Counsel

APPROVED this 15 day of NOVEMBER, 2004

JEREMY HARRIS, Mayor
City and County of Honolulu

CERTIFICATION

I, William D. Balfour, Jr., in my capacity as Director of the Department of Parks and Recreation, City and County of Honolulu, do hereby certify that the foregoing is a full, true and correct copy of the Rules and Regulations relating to Rule Making Proceeding, Declaratory Rulings, and Government Records and Information, which were adopted on September 17, 2004, following a public hearing held on September 1, 2004, after public notice was given on Friday, July 16, 2004, in the Honolulu Star Bulletin.

W. D. Balfour

WILLIAM D. BALFOUR, JR.
Department of Parks and Recreation
City and County of Honolulu

DEPARTMENT OF PARKS AND RECREATION

Chapter 19-1, City and County of Honolulu Administrative Rules, on the Summary Page dated September 17, 2004, was adopted on September 17, 2004, following a public hearing held on September 1, 2004, after public notice was given in the Honolulu Star Bulletin on July 16, 2004.

The adoption of the rules relating to Rule Making Proceeding, Declaratory Rulings, and Government Records and Information shall take effect ten days after filing with the Office of the City Clerk, City and County of Honolulu.

W. D. Balfour

WILLIAM D. BALFOUR, JR., Director
Department of Parks and Recreation

APPROVED:

JEREMY HARRIS, Mayor
City and County of Honolulu

Dated: 11-15-04

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

Filed this 24th day of November, 2004

Denise C. DeCosta

DENISE DE COSTA, City Clerk