

BUILDING DEPARTMENT
DEPARTMENT OF TRANSPORTATION SERVICES
DEPARTMENT OF LAND UTILIZATION
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

RULES OF THE BUILDING DEPARTMENT,
DEPARTMENT OF TRANSPORTATION SERVICES,
AND DEPARTMENT OF LAND UTILIZATION
GOVERNING DISPENSING RACK PERMITS FOR
THE INSTALLATION AND MAINTENANCE OF
DISPENSING RACKS WITHIN THE WAIKIKI
BUSINESS DISTRICT

Pursuant to and by virtue of the authority set forth in Section 4-105, Revised Charter of Honolulu 1973 (hereinafter "RCH"), Section 6-1403(c), RCH (1979 Supp.), and Ordinance No. 82-50, the Building Superintendent and the Directors of the Departments of Transportation Services and Land Utilization, City and County of Honolulu, subject to the approval of the Mayor of the City and County of Honolulu, hereby adopt these rules governing dispensing rack permits for the installation and maintenance of dispensing racks within the Waikiki Business District:

PART I

TITLE

Section 1.1. Title. These rules are entitled "Rules of the Building Department, Department of Transportation Services and Department of Land Utilization governing dispensing rack permits for the installation and maintenance of dispensing racks within the Waikiki Business District."

PART II

DEFINITIONS

Section 2.1. Definitions. Whenever used in these rules:

- (1) "Building Superintendent" means the Director and Building Superintendent of the City and County of Honolulu, or his designated representative;
- (2) "Department" means the Building Department of the City and County of Honolulu;
- (3) "Dispensing rack" means any structure or stand used to hold literature, handbills, advertisements or other such publications erected and maintained upon the public

streets, alleys, sidewalks, malls, parks, beaches and other public places within the Waikiki Business District. "Dispensing rack" does not include newsstands used for the sale or offer for sale of newspapers of general circulation;

- (4) "Newspaper of general circulation" means a publication published at regular intervals, primarily for the dissemination of news, intelligence and opinions on recent events or newsworthy items of a general character, and reaching all classes of the public; and
- (5) "Permitted location" means a location where a dispensing rack may be erected and maintained pursuant to a permit issued by the Department. Permitted locations are identified in the Dispensing Rack Location Map on display at the Department, a true and correct copy of which is attached hereto as Appendix I and incorporated in these Rules by reference.
- (6) "Waikiki Business District" means the public streets, alleys, sidewalks, malls, parks, beaches and other public places within the area in Waikiki commencing at the intersection of Kalakaua Avenue and Kuhio Avenue, commonly known as the Waikiki Gateway, thence along and including the mauka side of Kuhio Avenue to Kapahulu Avenue, thence along the Diamond Head side of Kapahulu Avenue to the ocean, thence along the ocean to the Diamond Head property line of Fort DeRussy, thence along said property line to Kalakaua Avenue, thence along the makai side of Kalakaua Avenue back to the Waikiki Gateway.

PART III

PUBLIC INFORMATION; PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF RULES; DECLARATORY RULINGS BY DEPARTMENT

Section 3.1. Methods Whereby Public May Obtain Information. The public may obtain information as to matters within the jurisdiction of the Department relating to dispensing rack permits by inquiring at:

- (1) The Office of the City Clerk, City Hall, where all rules of the Department relating thereto are on file; or
- (2) The Office of the Building Superintendent, Honolulu Municipal Building, Honolulu, Hawaii. All rules, orders or opinions of the Department relating thereto are on file and available for public inspection thereat where permitted by law.

Such inquiry may be made in person at the office during business hours, or by submitting a request for information in writing to the Building Superintendent.

Section 3.2. Petition for Adoption, Amendment or Repeal of Rules. (a) Any interested person may petition the Department requesting the adoption, amendment or repeal of any rule governing dispensing rack permits.

(b) The petition shall be submitted to the Building Superintendent, Building Department, Honolulu Municipal Building, Honolulu, Hawaii 96813. It shall include:

- (1) The name, address and telephone number of the petitioner;
- (2) A statement of the nature of the petitioner's interest;
- (3) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed;
- (4) An explicit statement of the reasons in support of the proposed rule, amendment or repeal;
- (5) Any other information relevant to the petition; and
- (6) The signature of the petitioner.

(c) The Department shall within thirty (30) days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with Chapter 91, Hawaii Revised Statutes, for the adoption, amendment or repeal of the rule, as the case may be.

Section 3.3. Declaratory Rulings by Department.

(a) Any interested person may petition the Department for a declaratory order as to the applicability of any statute or ordinance relating to the Department, or of any rule or order concerning the dispensing rack permits.

(b) The petition shall be submitted in duplicate to the Building Superintendent, Building Department, Honolulu Municipal Building. It shall contain:

- (1) The name, address and telephone number of the petitioner;
- (2) A statement of the nature of petitioner's interest, including reasons for the submission of the petition;

- (3) A designation of the specific provision, rules or order in question;
- (4) A complete statement of facts;
- (5) A statement of the position or contention of the petitioner; and
- (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

(c) The Department may reject any petition which does not conform to the foregoing requirements.

(d) The Department may for good cause refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the Department may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing fact, or facts which can reasonably be expected to exist in the near future;
- (2) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief;
- (3) The issuance of the declaratory ruling may adversely affect the interests of the City, the Department or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise; and
- (4) The matter is not within the jurisdiction of the Department.

(e) Where any question of law is involved, the Department may refer the matter to the Corporation Counsel. The Department may also obtain the assistance of other agencies, where necessary or desirable.

(f) Upon the disposition of his petition, the petitioner shall be promptly informed thereof in writing by the Building Superintendent.

(g) Orders disposing of petitions shall have the same status as other Department orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist.

PART IV
GENERAL PROVISIONS

Section 4.1. When Required. Any person desiring to erect and maintain a dispensing rack within the Waikiki Business District must obtain a permit therefor from the Building Superintendent.

Section 4.2. Dispensing Rack Permit. A dispensing rack may be erected and maintained within the Waikiki Business District only at the location specified in the dispensing rack permit.

Section 4.3. One Permit Per Permitted Location. If more than one dispensing rack may be erected in any permitted location designated in the Dispensing Rack Location Map, only one permit in each such permitted location shall be issued to any applicant.

Section 4.4. Duration. A dispensing rack permit may be issued for any length of time not exceeding six (6) months and may be renewed for the same location for an additional length of time not exceeding six (6) months. Notwithstanding the foregoing, all permits shall expire at 12:00 a.m. on July 1 of each year.

Section 4.5. Fees. The fee for each permit issued shall be \$10.00 per month, or portion of a month, due and payable at the time of the issuance or renewal of the permit. The fee to replace a lost or destroyed decal shall be \$1.00 due and payable at the time the new decal is issued by the Department. These fees represent the cost to be incurred by the City in administering the dispensing rack system.

Section 4.6. Non-Transferable. A dispensing rack permit issued by the Department is non-transferable. Only the permittee designated in the permit shall be entitled to erect and maintain a dispensing rack within the Waikiki Business District.

Section 4.7. Duty of Permittee. It shall be the duty and responsibility of the permittee named in the dispensing rack permit to do the following:

- (1) Maintain the dispensing rack in a safe and sanitary condition;
- (2) Maintain the sidewalk area beneath the dispensing rack and immediately around it reasonably free from debris and litter;
- (3) Within 24 hours of the receipt of notice from the Department, remove any unsafe or unsanitary dispensing rack or correct the condition of the dispensing rack or the area immediately around or below it; and
- (4) Comply with the provisions of Ordinance No. 82-50 and these rules, as from time to time

amended, and any other laws and rules and regulations of the State and the City, whether in existence at the time the dispensing rack permit is issued or enacted or amended thereafter.

Section 4.8. Nonuse of Permit. Failure to use a permit at the designated time and place, not due to an act or interference by the Department, shall not result in a refund or credit of fees previously paid.

Section 4.9. Severability. If any section, subsection, sentence, clause, phrase or portion of these rules is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4.10. Effective Date. These rules shall take effect ten days after filing with the office of the City Clerk.

PART V

LOCATIONS

Section 5.1. Department of Transportation Services. Pursuant to the authority granted in Ordinance No. 82-50, the Department of Transportation Services (hereinafter "DTS") has designated permitted locations in the Waikiki Business District where dispensing racks may be erected and maintained and has designated the number of dispensing racks which may be erected in each permitted location.

Section 5.2. Permitted Locations. A dispensing rack may be erected and maintained, pursuant to a dispensing rack permit, at the locations within the Waikiki Business District described in Appendix I attached hereto and made a part hereof. Each permitted location in Appendix I identifies a City and County of Honolulu street light pole upon which may be affixed one or two dispensing racks, as provided in Appendix I.

Section 5.3. City's Right to Remove Street Light Pole. The City reserves the right to remove or relocate any street light pole. Written notice of the City's intention to remove or relocate a street light pole shall be given to any permittee entitled to maintain a dispensing rack on such pole. The permittee may select any other permitted location then available in lieu of the removed or relocated street light pole, may elect to be placed on the waiting list, in which case he shall be entitled to priority on the waiting list, or may cancel his or her permit. In the event the permittee elects to be placed on the waiting list or to cancel his or her permit, the permittee shall be entitled to a refund or credit of the fee previously paid for the unused time remaining under the permit.

PART VI

DESIGN

Section 6.1. Duty of the Department of Land Utilization. Pursuant to the authority granted in Ordinance No. 82-50, the Department of Land Utilization (hereinafter "DLU") has designed a dispensing rack. The design plan is attached hereto and incorporated herein as Appendix II.

Section 6.2. Dispensing Rack to Conform to Design Plan. Every dispensing rack erected and maintained, pursuant to a dispensing rack permit, shall conform to the design plan attached hereto as Appendix II. The detail and color of the dispensing rack shall be as designated in said design plan.

Section 6.3. Graphics Prohibited. No graphics, advertisements, wording or decals, other than the permit decal, shall be inscribed, attached or displayed on the dispensing rack.

PART VII

PROCEDURE TO OBTAIN
DISPENSING RACK PERMIT

Section 7.1. Permit Application. (a) Any person desiring to erect and maintain a dispensing rack within the Waikiki Business District shall apply to the Department for a permit.

(b) The applicant shall complete, and file with the Department, an application form setting forth the following:

- (1) The name, mailing address and telephone number of the applicant and the name under which the business is conducted;
- (2) The name, mailing address and telephone number of the individual person or persons who will have supervision of and responsibility for the use and maintenance of the dispensing rack;
- (3) Location(s) where the applicant proposes to erect and maintain a dispensing rack;
- (4) An authorization for the City to remove and impound any dispensing rack which violates Ordinance No. 82-50 or which is in a location other than that specified in the permit, and an agreement to hold the City, its officers and its employees, free from any claim for damages or losses resulting from the removal or impounding of such racks;

- (5) The number of dispensing rack permits requested; and
- (6) Name of insurer, policy limits, policy number and policy expiration date of the applicant's public liability insurance required by Ordinance No. 82-50.

(c) Upon filing, the application shall be date-stamped and time-stamped. One copy of the application shall be returned to the applicant.

Section 7.2. Verification of Availability of Location. (a) At the time of filing, the Building Superintendent shall ascertain that the location requested in the permit application is a permitted location and that there is a permit available for that permitted location.

(b) If any location requested by the applicant is not within a permitted area, the application shall be denied by the Building Superintendent, or his authorized representative, as to that location.

(c) If a location requested by the applicant is within a permitted location, but no permit is available for that location, the application shall be denied by the Building Superintendent.

Section 7.3. Permit Issuance or Denial. If a permit is available at the location requested and the applicant's dispensing rack conforms to the design plan described in these rules, the Building Superintendent shall issue a dispensing rack permit to the applicant upon the receipt from the applicant of the certificate of insurance or copy of the public liability insurance policy required by Ordinance No. 82-50 and payment of the required fee.

Section 7.4. Decal. The permittee shall affix the dispensing rack decal issued to the permittee by the Department in plain sight on the dispensing rack in the place designated therefor on the design plan. Upon loss, defacement or destruction of the decal, the permittee shall file an application for a new decal, providing the Building Superintendent with the following information:

- (1) Name, mailing address and telephone number of the applicant and the name under which the business is located.
- (2) Location of the dispensing rack for which a new decal is requested.

Section 7.5. Failure to Pick Up Permit. If an applicant fails to pick up the dispensing rack permit and decal within five (5) working days after notice to the applicant that the permit application has been approved by the Department, the application shall be

cancelled and the applicant shall forfeit the dispensing rack location designated in the permit.

Section 7.6. Renewal. Applications for renewal of a dispensing rack permit shall be filed prior to the expiration date of the permit. The application for renewal shall contain the same information required by Section 7.1 above. The renewed permit must be obtained by the permittee, and new decal affixed to the dispensing rack, prior to the expiration date of the original permit. Failure to renew a permit pursuant to these rules will result in the expiration of the original permit and loss of the dispensing rack location designated in the expired permit.

PART VIII

WAITING LIST

Section 8.1. Waiting List Purpose. A waiting list shall be established so that applicants desiring a dispensing rack permit for a permitted area can be accommodated in a fair and impartial manner whenever a dispensing rack permit in that area becomes available for issuance. A dispensing rack permit becomes available if a previously issued permit is not renewed as provided in these rules, if a permit is revoked or surrendered, if the applicant fails to submit an application for a permit or pick up the permit within the time specified in these rules, or if a dispensing rack is abandoned by the permittee.

Section 8.2. Requirements. The application for a dispensing rack permit shall be completed by each applicant who wishes to be placed on the waiting list and filed with the Building Superintendent, or his designated representative. The application shall be date-stamped and time-stamped. The original copy of the application will be retained by the Department and the duplicate copy given to the applicant.

Section 8.3. First-Come, First Served. Names of applicants for a dispensing rack permit shall be entered on the waiting list in the order in which the applicant files his or her application for a dispensing rack permit with the Department. However, no person shall be permitted in excess of fifteen locations on the waiting list.

Section 8.4. Procedure When Permit Becomes Available. As permits become available, the following procedure shall be followed:

- (1) The first applicant on the waiting list who has requested the location which is available will be contacted by mail. It shall be the responsibility of the applicant to notify the Department of any change in the information originally provided by the applicant, including any change in address.

- (2) A letter shall be mailed, by certified mail, to the address provided by the applicant and the applicant will be given a deadline of ten (10) working days from the postmarked date of the letter to submit the application for a dispensing rack permit to the Department.
- (3) If the applicant does not respond by the arranged deadline, or if the letter is returned to the Building Superintendent as undeliverable, the applicant's name shall be removed from the waiting list and the next applicant on the waiting list shall be afforded the same opportunity to obtain a dispensing rack permit.

Section 8.5. Termination of Waiting List. The waiting list shall terminate on the day prior to the lottery each year.

PART IX

LOTTERY

Section 9.1. Lottery Established. The City recognizes that the demand for dispensing racks in certain locations, particularly at the inception of this program, may be in excess of the number that will be available, although the City has made an effort to maximize the number of dispensing racks that will be available. Accordingly, the City hereby establishes a lottery system to as fairly as possible allot the available dispensing rack locations to those seeking them.

Section 9.2. Lottery Application. Any corporation, partnership or sole proprietor (hereinafter "applicant" or "person") desiring a permit for a dispensing rack may file an application to participate in the lottery, pursuant to these rules, within ten (10) working days of the effective date of these rules. Thereafter, persons may apply for a permit in locations that remain after the lottery has been completed or may file an application to be placed on the waiting list.

Section 9.3. One Representative Per Applicant. The City recognizes that the lottery system may not achieve its purpose of fairly allocating the available dispensing rack locations if an applicant is permitted to send more than one representative to participate in the lottery. The City recognizes, however, that an applicant may propose to distribute two or more different publications, each of which should be afforded an equal opportunity to a dispensing rack location. Therefore, only one representative per applicant may participate in the lottery; provided, however, that if the applicant distributes or proposes to distribute two or more different publications, the applicant may have one representative per publication proposed to be distributed by the applicant. In order

to be eligible for more than one representative to participate in the lottery at the time of application, the applicant shall attach a representative sample of the publications he or she proposes to distribute. The applicant may be requested by the Department to provide other evidence sufficient to show that the publications are different and is not an attempt to unfairly increase the applicant's chances of securing more dispensing rack locations in the lottery. Any dispensing rack permit issued for a location assigned pursuant to the lottery shall be issued in the name of the individual, corporation or partnership appearing on the application to participate in the lottery. The named individual, corporation or partnership shall be responsible for all of the duties and responsibilities required of the dispensing rack permittee, including the acquisition of public liability insurance.

Section 9.4. Procedures. (a) Each applicant who has filed an application within ten (10) working days of the effective date of these rules shall be assigned a number by lot by the Building Superintendent at a meeting to be announced for this purpose.

(b) The number assigned to an applicant as described in subsection (a) above shall determine the priority accorded the applicant in choosing a location for a dispensing rack.

(c) At the same meeting, all applicants who have been assigned a number shall select locations for individual dispensing racks. The order of selection shall be determined by the number assigned to the applicant in subsection (a) above.

(d) Each applicant shall have an opportunity to select one location for one dispensing rack, until all applicants have had the same opportunity. The process shall then repeat itself, with the first applicant making a selection immediately after the last applicant has done so.

(e) The selection process shall continue until all locations have been chosen or all applicants have selected the number of locations for which they desire a permit. All remaining locations will then be available for those persons who have applied for locations but were not eligible for the lottery. Selection for the remaining locations shall be conducted in the manner described in Part VIII, Waiting List, of these Rules. The Waiting List provisions are a separate procedure, not to be confused with the Lottery procedure. Placement on the Waiting List is not to be construed as placement on the Lottery List, which will require separate application.

(f) The lottery system shall operate as per the following example:

ABC is assigned by lot the number 1;
DEF is assigned by lot the number 2;

GHI is assigned by lot the number 3.

ABC, by virtue of the number assigned by lot, may select any one side of a pole location.

DEF will then be given the opportunity to select one side of a pole location in the same manner, followed by GHI.

Assuming for purposes of this example there are only three applicants, ABC will then be allowed to select a second location after GHI has made a first choice.

The process shall continue as described in subsection (e) above.

Section 9.5. Application for Permit. To obtain the dispensing rack permit and decal, each person participating in the lottery must file a dispensing rack permit pursuant to the procedure set forth in Part VII, Procedure to Obtain Dispensing Rack Permit, within five (5) working days after the date of the lottery. Failure to file the application for a dispensing rack permit within said period shall result in loss of the locations awarded pursuant to the lottery.

Section 9.6. Annual Lottery. The City recognizes that some locations may be more desirable than others. Accordingly, it is the intent of the City to hold a lottery on June first of each year, or the next business day thereafter. Recognizing further that the conditions that have dictated the initial lottery may change, the City may dispense with the lottery. Notice of such intent and a hearing to permit testimony on this issue will be held pursuant to Chapter 91, Hawaii Revised Statutes.

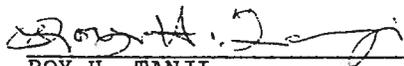
PART X

CONTESTED CASES

Section 10.1. Post-Seizure Hearing. Within forty-eight (48) hours following removal and impounding of a dispensing rack without prior notice and opportunity for a hearing, pursuant to Section 26-___.4(m) of Ordinance No. 82-50, a letter shall be sent to the permittee or owner of the rack at the last known address of the permittee or owner. The letter shall be sent by certified mail. The letter shall advise the permittee of the reason for the immediate removal and impounding of the dispensing rack and of the permittee's right to a post-seizure administrative hearing within forty-eight (48) hours after the permittee makes a written request for such a hearing. The sole issue before the hearing officer shall be whether there was probable cause to remove and impound the rack. The hearing officer shall issue a written decision within twenty-four (24) hours.

Section 10.2. Other Contested Cases. In every other case where the Department proposes to revoke a permit, or remove and impound a rack, the permittee shall be entitled to notice and a hearing in conformity with Chapter 91, HRS.

ADOPTED this 1st day of July, 1983, by the Building Superintendent and the Directors of the Departments of Transportation Services and Land Utilization, City and County of Honolulu, State of Hawaii.



ROY H. TANJI
Building Superintendent
City and County of Honolulu



WILLIAM A. BONNET, Director
Department of Transportation
Services
City and County of Honolulu



MICHAEL M. McELROY, Director
Department of Land Utilization
City and County of Honolulu

APPROVED AS TO FORM:



Deputy Corporation Counsel

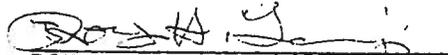
APPROVED this 1st day of
July, 1983.



EILEEN R. ANDERSON, Mayor

CERTIFICATION

We, ROY H. TANJI, WILLIAM A. BONNET and MICHAEL M. McELROY, in our capacity as Building Superintendent, Director of the Department of Transportation Services, and Director of the Department of Land Utilization, City and County of Honolulu, respectively, do hereby certify that the foregoing is a full, true and correct copy of the Rules relating to dispensing racks in Waikiki which were adopted by said Building Superintendent and Directors of the Departments of Transportation Services and Land Utilization, following a public hearing held on June 22, 1983, after public notice was given on June 2, 1983, in The Honolulu Advertiser and the Honolulu Star-Bulletin.


ROY H. TANJI
Building Superintendent
City and County of Honolulu


WILLIAM A. BONNET, Director
Department of Transportation
Services
City and County of Honolulu


MICHAEL M. McELROY, Director
Department of Land Utilization
City and County of Honolulu

Received this 6th day of
July, 1983.


RAYMOND K. PUA, City Clerk