

Chapter 29

STREETS, SIDEWALKS, MALLS AND OTHER PUBLIC PLACES

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[*Editor's Note: Chapter 29, Article 11, was redesignated as Chapter 29, Article 11A, by Ordinance 02-10, such designation to be effective from the date of approval of Ordinance 02-10 (March 28, 2002) to June 30, 2002. On July 1, 2002, Chapter 29, Article 11A, was repealed.]

Article 1. General Provisions

Sections:

- 29-1.1 Definitions.
29-1.2 Purpose.

Sec. 29-1.1 Definitions.

For the purposes of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future. Words used in the plural number include the singular number and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Animal" means and includes every living creature.

"Building superintendent" means the director and building superintendent of the city or the director's authorized representative.

"Chief of police" means the chief of police of the city or the chief's authorized representative.

"Chinatown" means the area of the Chinatown special district as described in Section 21-9.60-2.

"College Walk Mall" means the portion of College Walk established as a pedestrian mall under Section 15-25.1(c).

"Curbside teller" means any structure that encroaches in whole or in part over or on a public sidewalk and is used to assist patrons of financial institutions to deposit funds or otherwise transact business with said institutions.

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

"Freight chute" means a shaft with or without an inclined plane extended downwards from the surface of a public sidewalk intended for the transportation of freight and goods.

"Freight elevator" means an appliance or mechanism designed primarily for the transportation of freight and goods from the surface level of the sidewalk downwards and return.

"Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

"Litter" means "garbage," "refuse" and "rubbish" as defined in this section and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

"Mall" means any public thoroughfare, other than a sidewalk as defined in this section, which is under the control or jurisdiction of the city and intended exclusively or primarily for the use of pedestrians.

"Mobility device" means a wheelchair, crutch, cane, walker or device that functions similarly to allow an injured or disabled person increased mobility for sidewalk travel.

"Newspaper of general circulation" means a newspaper of a state, county or city, published for the dissemination of local or telegraphic news and intelligence of a general character, having a subscription list of paying subscribers, and established, printed and published at regular intervals in such state or city, and reaching all classes of the public.

"Newsstand" means any appliance, structure, instrument or stand used for the vending or distribution of newspapers.

"Nonprofit organization" means a nonprofit corporation qualifying as such under HRS Chapter 415B or any other society, association, corporation or other organization engaged in religious, charitable, educational, scientific, literary or other benevolent purposes whose charter or other enabling act contains provisions to the effect that such organization is not organized for profit; none of its stock or any part of its assets, income or earnings will be issued or distributed to its members, directors or officers, except for services actually rendered to the organization; and

upon dissolution, its assets shall be distributed to another nonprofit corporation, society, association, or organization engaged in one or more of the benevolent purposes listed herein.

“Park” means the same as “public park” under Section 10-1.1.

“Peddle or peddling” means the sale or offer for sale, the renting or offer for rent, or the display for sale or rent of any goods, wares, merchandise, foodstuffs, or other kinds of property or services. The term shall include, but not be limited to, the solicitation of orders or making of referrals on a public place for the future sale, delivery, or performance of property or services in a place other than a public place as part of a scheme to evade the provisions of Article 6.

“Pedestrian” means a person who is on foot or assisted by a mobility device and able to move immediately to accommodate other sidewalk users.

“Pedestrian use zone” means the portion of the width of a sidewalk that extends toward the street up to eight feet from the adjacent private or public property line bordering the sidewalk opposite the curb; provided that the pedestrian use zone also constitutes the portion of the width of a replacement sidewalk that is up to eight feet from the replacement sidewalk’s edge furthest from the street.

“Person” shall have the same meaning as defined by HRS Section 1 19.

“Private premises” means any dwelling, house, building or other structure, designed or used either wholly or in part for private residential or commercial purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

“Public place” means any and all:

- (1) Publicly owned or maintained streets, sidewalks, boulevards, alleys, or other ways open to the general public;
- (2) Publicly owned or maintained parks, beaches, squares, spaces, grounds, malls, buildings, or other places open to the general public; or
- (3) Privately owned or maintained streets, sidewalks, boulevards, and alleys open to the general public.

“Public telephone enclosure” means any enclosure constructed or installed for the specific purpose of enclosing a telephone available for the general use of the public with or without charge and operated under franchise as provided by law. The term shall also include the contents of the enclosure and any appurtenant equipment or cables attached thereto.

“Refuse” means all putrescible and nonputrescible solid wastes, including animal body wastes, garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.

“Replacement sidewalk” means a pedestrian passageway that crosses private property pursuant to a public easement, usually resulting from obstructions on public land that require pedestrians to pass across adjacent private property.

“Rubbish” means nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

“Sidewalk” means that portion of a street between a curb line or the pavement of a roadway, and the adjacent private or public property line, whichever the case may be, intended for the use of pedestrians, including any setback areas acquired by the city for road widening purposes.

“Stored personal property” means any and all tangible personal property, including items, goods, materials, merchandise, furniture, equipment, fixtures, structures, clothing, and household items:

- (1) that has been placed on public property for more than 24 hours whether attended or unattended; or
- (2) that remains in a park after park closure hours

without authorization by statute, ordinance, permit, regulation or other authorization by the city or state. The term shall not include any vehicle as defined in HRS Section 291C-1, any vessel as defined in HRS Section 200-23, or any property subject to HRS Chapter 523A.

“Street” means the entire width between the property lines of every way publicly owned and maintained when part thereof is open to the use of the public for purposes of vehicular travel or any private street, highway or thoroughfare which for more than five years has been continuously used by the general public.

“Sun Yat Sen Mall” means the portion of River Street established as a pedestrian mall under Section 15-25.1(c).

“Urban zone” includes the Ala Moana/Kakaako, Downtown, Kalihi, McCully/Moiliili/Makiki, and Waikiki districts, as described in Section 29-18.3 and includes the sidewalks on both sides of the streets, avenues, boulevards, highways, roads and drives within those districts and those marked as the district boundaries.

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks. (Sec. 26-1.1, R.O. 1978 (1983 Ed.); Am. Ord. 96-58, 02-51, 03-26, 10-26, 11-29)

Sec. 29-1.2 Purpose.

The intent and purpose of this chapter is to promote the public welfare by regulating the use of all public sidewalks and malls. (Sec. 26 1.2, R.O. 1978 (1983 Ed.))

Article 2. Lei Selling

Sections:

- 29-2.1 Regulations.**
- 29-2.2 Violation--Penalty.**

Sec. 29-2.1 Regulations.

- (a) No person, under the age of 15 years, shall sell leis upon the streets, alleys, sidewalks, malls and other public places, including entrances at piers.
- (b) No person, while engaged in the business of selling leis upon the streets, alleys, sidewalks, malls and at entrances to piers, shall obstruct traffic, or wilfully or negligently hold, touch, push, jostle, molest or in any manner disturb any person, customer or another lei seller.
- (c) All persons engaged in selling leis at the piers shall form not more than two straight single lines in the front of the pier, one line extending to the right and the other to the left from the main entrance, and the said lines shall run parallel to and within three feet of the front wall of the pier as follows:
The positions in said lines shall be occupied by the lei sellers in the order of their arrival, the person first arriving being entitled to stand at the head of one line and the person arriving next, at the head of the other line; provided, that no person shall occupy the head position of any line more than one day within a period of 30 days, unless such person's turn arrives sooner by rotation. The “head” of a line shall be that position which is nearest to the main entrance to the pier.
- (d) No lei seller arriving late shall break into a line or usurp the position of another.

(Sec. 26-2.1, R.O. 1978 (1983 Ed.))

Sec. 29-2.2 Violation--Penalty.

Any person violating any provision of this article shall, upon conviction, be punished by a fine not exceeding \$25.00. (Sec. 26-2.2, R.O. 1978 (1983 Ed.))

(Article 3. Minors Engaged in Street Trade. Repealed by Ord. 98-04)

Article 3. Reserved

Article 4. Litter Control

Sections:

- 29-4.1 Definitions.**
- 29-4.2 Enforcement authority.**
- 29-4.3 Responsibilities--Requirements.**
- 29-4.4 Prohibited activities.**
- 29-4.5 Cost of litter removal.**
- (29-4.6 Litter control fund. Repealed by Ord. 98-22.)**
- 29-4.6 Reserved.**
- 29-4.7 Enforcement.**
- 29-4.8 Violation--Penalty.**
- (29-4.9 Severability. Repealed by Ord. 02-37.)**
- 29-4.9 Reserved.**

Sec. 29-4.1 Definitions.

As used in this article:

"Enforcement officer" means any individual designated by the department of planning and permitting or the department of parks and recreation to issue citations to enforce the provisions of this article, and any police officer of the Honolulu police department.

"Inspector" means any individual designated by the department of planning and permitting to issue notices of violation to enforce provisions of this article.

"Litter" means rubbish, waste material, garbage, trash, offal or any debris of whatever kind or description, whether or not it is of value, and includes improperly discarded paper, metal, plastic, glass or solid waste. Litter also includes "refuse" as defined in Section 29-1.1. Litter may include derelict vehicles.

"Littering" means the wilful or negligent throwing, dropping, placing, dumping or depositing, of any litter, or the directing or otherwise causing of any such act, in any place on land or water other than in public or private receptacles or designated disposal sites. (Sec. 26-11.1, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 02-37)

Sec. 29-4.2 Enforcement authority.

(a) Any enforcement officer is authorized to:

- (1) Issue a written citation pursuant to Section 29-4.7 (a) if such enforcement officer witnesses a violation, receives a report from a private citizen witnessing a violation or has probable cause to believe that a person has violated the provisions of this article.
- (2) Investigate any litter and household garbage found thrown, deposited, or dumped on a street, roadside, alley or highway to find any personal identification contained therein.
- (3) Issue a written citation pursuant to Section 29-4.7 (a) for violations of this article.

(b) Any inspector is authorized to:

- (1) Investigate any litter and household garbage found thrown, deposited, or dumped on private property, and any notice, poster or other paper or device, posted, affixed or displayed on any lamppost, public utility pole or shade tree, or upon any public structure or building.
- (2) Issue a notice of violation pursuant to Section 29-4.7(b) or remove and dispose of any notice, poster, or other paper or device posted, affixed or displayed in apparent violation of Section 29-4.4(a)(7).

(c) Any person who witnesses the throwing, dropping, placing, dumping or depositing of litter in violation of this chapter, including the throwing of litter from a vehicle, may report the date, time of day and location of the littering and, in the case of littering from a vehicle, the license number of the vehicle, to any enforcement officer. The license number, as recorded, shall constitute prima facie evidence that the littering reported to have been done from a vehicle was done by the person to whom the vehicle is registered.

(d) In the case of a notice, poster, or other paper or device displayed in violation of Section 29-4.4(a)(7), which advertises an event, establishment, or business, the device displayed shall constitute prima facie evidence in a civil proceeding that it is being displayed by any person owning the establishment or business or organizing the event.

(Sec. 26-11.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 02-37)

Sec. 29-4.3 Responsibilities--Requirements.

(a) It shall be the responsibility of:

- (1) Owners and persons in control of any private property to maintain the premises free from litter at all times; provided, that this section shall not prohibit the storage of litter in authorized private receptacles for collection.
- (2) Persons owning or occupying property to keep the sidewalk area abutting the property line free of litter.
- (3) (A) The operators of all disposal facilities and private disposal facilities, as defined in Chapter 9, to maintain a record of all waste which is deposited at each facility other than by city-operated refuse vehicles and by householders depositing their own refuse.
- (B) The record shall contain the name and address of each person depositing waste material, the license number of the vehicle transporting the waste, the approximate time of the deposit, and a brief description and the

approximate volume of the waste. The record shall be made available to any enforcement officer of the city for inspection, upon reasonable request.

- (b) The Honolulu police department shall arrange to patrol or conduct surveillance activities at locations which are reported to be frequent illegal dumping areas for litter.
- (c) All complaints of alleged litter violations shall be investigated by the city. Enforcement officers shall, wherever practicable, inspect any litter found on any street, highway, alley or public place, and any traceable ownership shall be subject to the provisions of this article.
- (d) The director of parks and recreation shall coordinate city agencies in antilitter efforts and cooperate with the state to accomplish coordination of antilitter campaigns.

(Sec. 26-11.3, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 02-37)

Sec. 29-4.4 Prohibited activities.

- (a) No person shall:
 - (1) Throw or deposit litter on any street or sidewalk and in any park or other public or private property within the city, except in public or private receptacles, and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park, street, sidewalk or other public or private property. Where public or private receptacles are not provided, all such litter shall be carried away by the person responsible for its presence and properly disposed of;
 - (2) Sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway;
 - (3) While a driver or passenger in a vehicle, throw or deposit litter upon any street or other public place within the city, or upon private property;
 - (4) Drive or move any truck or other vehicle within the city unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited from the vehicle upon any street, sidewalk, alley or other public place. Nor shall any person drive or move any truck or other vehicle within the city, the wheels or tires of which carry onto or deposit in any street, sidewalk, alley or other public place, litter of any kind. In the event that litter is unavoidably dropped or tracked onto a street, sidewalk, alley or other public place, it shall be the duty of the driver of the vehicle to have said litter removed as quickly as possible;
 - (5) Throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the city;
 - (6) Throw out, drop or deposit within the city any litter, handbill or any other object from an aircraft;
 - (7) Post, affix or display any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamppost, public utility pole or shade tree, or upon any public structure or building except as may be authorized by law;
 - (8) Throw or deposit litter on any occupied, open or vacant private property within the city, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for litter collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk, alley or other public place or upon any private property;
 - (9) Permit an animal owned by such person or while in the person's custody to excrete any solid waste in any public place or on any private premises not the property of such owner; provided, however, that nothing herein shall affect the duty of the property owner or occupier to keep the premises free of litter and provided further that no violation shall occur if the owner of the offending animal promptly and voluntarily removes the animal waste; or
 - (10) Dump or dispose of any litter, refuse or other solid waste upon any public or private premises, including any watercourse or drainage facility whether publicly or privately owned within the city, except upon municipal disposal sites or private disposal sites established under Chapter 21.
- (b) No person shall dispose of any derelict vehicle, as defined in HRS Section 290-8, on any public roadway, alley, street, trail, bridge or highway or other public property, or on private property, without the authorization of the owner or occupant.
- (c) No person shall abandon scrap iron, lumber or similar materials upon any public street, road, highway or other public thoroughfare, or any part thereof.
- (d) Any person who, by oneself or through any agent or independent contractor, posts, affixes or displays a notice, poster or other paper or device in violation of Section 29-4.4(a)(7), or any person who knowingly causes such to be posted, affixed or displayed, to advertise the person's products, merchandise, services or events, by oneself or through any agent or independent contractor, shall be deemed to be displaying such notice, poster or other paper or device.

(Sec. 26-11.4, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 96-58, 02-37)

Sec. 29-4.5 Cost of litter removal.

- (a) Any person responsible for littering shall be liable to the city for the cost of removing such litter. The bill for the cost of removal shall be issued by the department of environmental services or the department of parks and recreation and shall state the amount to be charged by the city. The cost of removal shall be the actual cost incurred by the city, plus any administrative expenses associated with said removal; provided, however, that the amount to be charged shall not be less than five dollars. Nothing in this section shall be deemed to constitute a waiver of the city's right to issue a citation pursuant to Section 29-4.7 (a) including in instances where the person littering refuses to remove said litter or refuses to pay the city for the city's removal of said litter.
- (b) In the case of litter on open or vacant private property in the city, the director of planning and permitting is authorized to notify the owner of the property or the agent of such owner to properly dispose of the litter. Such notice shall be given by certified mail, addressed to said owner at the owner's last known address and a copy thereof shall be posted on the property. The notice shall describe the work to be done and shall state that if the work is not commenced within 30 calendar days after the notice is given and diligently prosecuted to completion without interruption, the director of planning and permitting shall so notify the director of environmental services and the director of environmental services shall enter upon the property and cause the removal of the litter thereon, and the cost thereof shall be a lien on the property. The director of environmental services shall observe the following procedures:
 - (1) Upon the failure, neglect or refusal of any owner or agent so notified to properly dispose of litter within 30 days after receipt of written notice or within 30 days after the date of such notice in the event the same is returned to the city because of an inability to make delivery thereof, provided the same is properly addressed to the last known address of such owner or agent, the director of environmental services is authorized and empowered to dispose of such litter or to order its disposal by the city. The director of environmental services and the director's authorized representatives, including any contractor with whom the director contracts under this section and assistants, employees or agents of such contractor are authorized to enter upon said property for the purpose of removing the litter thereon. Before the director of environmental

services or the director's authorized representative or contractor arrives, any property owner may remove the litter thereon at said owner's expense.

- (2) When the city has effected the removal of such litter or has paid for its removal, the actual cost thereof, plus accrued interest at the rate of eight percent per annum, shall be charged to the owner of such property who shall be billed therefor by mail. The bill shall apprise the owner that failure to pay the bill will result in a lien being placed upon the property. Interest at the rate of eight percent per annum shall accrue on any unpaid balance from the 31st calendar day after the bill has been mailed to the owner.
 - (3) 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 director of environmental services shall cause to be recorded with the city director of budget and fiscal services 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 budget and fiscal services, who shall refer the collection of the unpaid balance to the corporation counsel.
 - (4) Any work done by the city under this subsection is deemed to be done pursuant to a 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 director of environmental services, the corporation counsel may proceed to file a mechanic's and materialman's lien pursuant to the provisions of Part II of HRS Chapter 507, or any other appropriate lien procedures.
 - (5) The director of environmental services shall cause to be kept in the department a permanent record containing: (A) a description of each parcel of the property for which a notice to remove litter has been given under this subsection; (B) the name of the owner if known; (C) the date on which such notice was mailed and posted; (D) the charges incurred by the city in removing the litter and all incidental expenses in connection therewith; and (E) a brief summary of the work performed. Each such entry shall be made as soon as possible after completion of such act.
- (c) All moneys collected under this section shall be deposited into the solid waste special fund.
(Sec. 26-11.5, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 88 78, 02-37)

(Sec. 29-4.6 Litter control fund. Repealed by Ord. 98-22.)

Sec. 29-4.6 Reserved.

Sec. 29-4.7 Enforcement.

- (a) Any person charged with violating Section 29-4.4(a) shall be served with a citation and an order to appear before the district court. Any person charged with a first violation may, within seven days of the issuance of the citation, appear at the district court and post a bail bond in the amount of the minimum fine imposed for the offense charged, as determined by the court, for appearance at the next succeeding session of the court. Upon failure to appear at such succeeding session, said bail bond shall be deemed forfeited. The failure of such violator to make such appearance or payment within said seven days shall render such person subject to charges and to the penalties prescribed in Section 29-4.8.
- (b) Any person violating Section 29-4.3(a)(1) or (a)(2) or violating Section 29-4.4(a)(7), shall be issued a notice of violation by the director of planning and permitting or the director's designee mandating the removal of the litter or posted, affixed or displayed material. Failure to remove such litter or material will subject the owners or persons in control of private property to the penalties prescribed in Section 29-4.8. A notice of violation must be served upon responsible persons either personally or by certified mail. However, if the whereabouts of such persons are unknown and the same cannot be ascertained by the director or the director's designee in the exercise of reasonable diligence and the director or the director's designee provides an affidavit to that effect, then a notice of violation may be served by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.

(Sec. 26-11.7, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 02-37, 15-20)

Sec. 29-4.8 Violation--Penalty.

- (a) Except as otherwise provided in this article, any person found guilty of violating any provision of this article or any rule adopted pursuant to this article shall be guilty of a violation. The person shall be ordered to pay the city for the cost of litter removal and shall pay a criminal fine of not more than \$500.00 for each offense, or ordered to pick up and remove litter from a public place, as provided by HRS Section 339-8, or both.
- (b) For violations of Section 29-4.3(a)(1) or (2) and violations of Section 29-4.4(a)(7), in lieu of or in addition to the penalties prescribed in subsection (a), if the director of planning and permitting determines that any person, firm or corporation is not complying with a notice of violation, the director of planning and permitting may have the party responsible for the violation served, by certified mail or delivery, with an order pursuant to this subsection.
 - (1) Contents of the Order.
 - (A) The order may require the party responsible for the violation to do any or all of the following:
 - (i) Correct the violation within the time specified in the order;
 - (ii) Pay a civil fine not to exceed \$500.00 in the manner, at the place and before the date specified in the order;
 - (iii) 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.
 - (B) The order shall advise the party responsible for the violation that the civil fine, if unpaid within the prescribed time period, can be added to specified fees, taxes, or charges collected by the city.
 - (C) The order shall advise the party responsible for the violation that the order shall become final 30 calendar days after the date of its delivery. The order shall also advise the party responsible for the violation that the order may be appealed to the building board of appeals.
 - (2) Service of Notice of Order. A notice of order must be served upon responsible persons either personally or by certified mail. However, if the whereabouts of such persons are unknown and the same cannot be ascertained by the director of planning and permitting in the exercise of reasonable diligence and the director of planning and permitting provides an affidavit to that effect, then a notice of order may be served by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.

- (3) Effect of Order--Right to Appeal. The provisions of the order issued by the director of planning and permitting under this subsection shall become final 30 calendar days after the date of the delivery of the order. The party responsible for the violation may appeal the order to the building board of appeals. The appeal must be received in writing by the building board of appeals on or before the date the order becomes final. However, an appeal to the building board of appeals shall not stay any provision of the order except the imposition of a civil fine. No civil fine shall be imposed once an order has been appealed until a hearing has been held pursuant to HRS Chapter 91, and a decision upholding the fine has been rendered.
 - (4) Judicial Enforcement of Order. The director of planning and permitting may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director of planning and permitting need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.
- (c) Any person violating Section 29-4.4(b) or (c) shall be guilty of a petty misdemeanor and shall be ordered to pay the city for the cost of litter removal.
- (Sec. 26-11.8, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 97-13, 02-37, 15-20)

(Sec. 29-4.9 Severability. Repealed by Ord. 02-37.)

Sec. 29-4.9 Reserved.

Article 5. Use of Streets and Sidewalks by Solicitors and Canvassers

Sections:

- 29-5.1 Use unlawful for certain business purposes.**
- 29-5.2 Violation--Penalty.**

Sec. 29-5.1 Use unlawful for certain business purposes.

- (a) It is unlawful for any solicitor or canvasser to engage in business on any public street, sidewalk or mall where such person's operation tends to, or does impede or inconvenience the public or any person in the lawful use of such street, sidewalk or mall.
- (b) "Solicitor or canvasser," as used in this article, means any person, traveling by foot, or any other type of conveyance, or by wagon, automobile, motor truck, taking or attempting to take orders for sale of goods, wares, merchandise or other personal property for future delivery, or for services to be furnished or performed in the future, whether or not such person carries or exhibits any samples or collects advance payments on sales. The term shall also include any person who, for oneself or for another hires, leases, uses or occupies any building, structure, tent, room, shop, vehicle or any other place for the sole purpose of exhibiting samples and taking orders for future delivery.

(Sec. 26-5.1, R.O. 1978 (1983 Ed.))

Sec. 29-5.2 Violation--Penalty.

Any person violating any provision of this article shall upon conviction be punished by a fine not exceeding \$100.00 or by imprisonment not exceeding 30 days, or by both. (Sec. 26-5.2, R.O. 1978 (1983 Ed.))

Article 6. Peddler's License

Sections:

- 29-6.1 Annual fee.**
- 29-6.2 Regulation affecting peddling.**
- 29-6.3 Deceptive sales and commercial schemes prohibited.**
- 29-6.4 Violation—Penalty—Summons or Citation—Arrest.**

Sec. 29-6.1 Annual fee.

The annual fee for a peddler's license shall be \$27.50, provided that said fee is waived for all peddlers of newspapers of general circulation, and no license shall be required of the following:

- (1) Any person peddling fresh fish, fresh fruit, fresh leis, fresh flowers or fresh vegetables;
- (2) Any merchant of a store allowed to peddle on a portion of a sidewalk or mall under Article 6A; or
- (3) Any person who has reached the age of 60 years.

(Sec. 26-6.1, R.O. 1978 (1983 Ed.); Am. Ord. 92-73, 03-26)

Sec. 29-6.2 Regulation affecting peddling.

- (a) It is unlawful for any person to peddle on a public place without a peddler's license issued by the city, except as otherwise provided by Section 29-6.1.
- (b) It is unlawful for any person, whether exempt or licensed under Section 29-6.1, to peddle on a public place, unless such person is also duly licensed under the provisions of HRS Section 237-9 to engage in and conduct such business as required by said HRS Section 237-9.
- (c) Notwithstanding subsections (a) and (b) or any other ordinance to the contrary and except as specifically provided in this section, it is unlawful for any person to peddle on a public place in the following areas, even if such person is exempt or licensed under Section 29-6.1:
 - (1) On the Pali Highway from the intersection of Nuuanu Pali Drive to Castle Junction including the Pali Lookout (improved observation area at the summit) and access road thereto;
 - (2) Makapuu Lookout (parking area overlooking Makapuu Beach) on Kalaniana'ole Highway;
 - (3) On Diamond Head Road from Poni Moi Road to Kulamanu Place;
 - (4) Tantalus Drive from Aaliamanu Place to Ualakaa Park;
 - (5) Waimea Bay beginning at Maunawai to the Kupupolo Heiau on Kamehameha Highway;
 - (6) Within 300 feet of the easterly end of Naupaka Street on Laie Point;

- (7) Waikiki Peninsula upon the public streets, alleys, sidewalks, malls, parks, beaches and other public places in Waikiki commencing at the entrance to the Ala Wai Canal, thence along the Ala Wai Canal to Kapahulu Avenue, thence along the diamond head property line of Kapahulu Avenue to the ocean, thence along the ocean back to the entrance of the Ala Wai Canal;
- (8) Fort Street and Union Street Malls -- The length and width of those areas in downtown Honolulu designated as the Fort Street Mall and the Union Street Mall;
- (9) Chinatown and the length and width of College Walk Mall and Sun Yat Sen Mall; except as allowed under Article 6A or Article 10;
- (10) In any school zone as defined in Section 15-2.21 while school is in session. Provided, that this subdivision shall not apply to any authorized participant in a city-sponsored market program, or in any school-sponsored function, or to home door-to-door salespersons, solicitors or canvassers as defined in Section 29-5.1(b). For purposes of this subdivision: "School" means any public or private elementary, intermediate or high school; and "School is in session" means one hour before the start of classes and up until one hour after the last scheduled class ends;
- (11) Halona Scenic Lookout (parking area overlooking the Blowhole) on Kalaniana'ole Highway;
- (12) The grounds of City Hall and the Honolulu Municipal Building, as defined in Section 28-11.1 and including the public sidewalks abutting King Street, Alapai Street, Beretania Street, and Punchbowl Street. This subdivision shall not preclude use of said grounds by any concessionaire, licensee, lessee, or permittee of the city or by any peddler participating in the city-sponsored people's open market program; and
- (13) Within any public park or beach owned and operated by the city, except pursuant to a concession, permit or license issued by the city.

The provisions of this subsection shall not apply to the sale or offer for sale of newspapers of general circulation and to duly authorized concessions in public places. For purposes of this section, "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.

- (d) The provisions of subsection (c) shall not be construed as prohibiting the sale or offer for sale, rent or offer for rent, or display for sale or rent on the public streets, sidewalks, malls, or public places of goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services within the area authorized by a parade or street usage permit within the time specified in the permit and subject to the terms and conditions of the permit, as authorized by the holders of the permit.

(Sec. 26-6.2, R.O. 1978 (1987 Supp. to 1983 Ed.); Am. Ord. 88-36, 88-91, 92-73, 96-53, 96-58, 99-05, 03-26)

Sec. 29-6.3 Deceptive sales and commercial schemes prohibited.

It is unlawful for any person to engage in an unfair, deceptive, fraudulent or misleading act, practice or representation while promoting any goods, products, services, or property of any kind, upon street, alleys, sidewalks, parks, beaches and other public places. (Sec. 26-6.3, R.O. 1978 (1983 Ed.))

Sec. 29-6.4 Violation—Penalty—Summons or Citation--Arrest.

- (a) Penalty. Any person violating any provision of this article shall upon conviction be punished as follows:
 - (1) By a fine of \$100.00 if the violation did not occur within two years of the occurrence of a previous violation of this article;
 - (2) By a fine of \$250.00 if the violation occurred within two years of the occurrence of one previous violation of this article; or
 - (3) By a fine of not less than \$500.00 nor more than \$1,000.00, imprisonment not exceeding 30 days, or both if the violation occurred within two years of the occurrence of two or more previous violations of this article.
- (b) Summons or Citation. An authorized police officer shall issue to an alleged violator a summons or citation in accordance with Article 9; provided that the police officer may physically arrest an alleged violator in lieu of issuing a summons or citation.

(Sec. 26-6.4, R.O. 1978 (1983 Ed.); Am. Ord. 01-45, 03-26)

**Article 6A. Peddling by Merchant of a Store on Chinatown Sidewalk or Mall,
College Walk Mall, Sun Yat Sen Mall, and Historic Moiliili Sidewalk**

Sections:

- 29-6A.1 Definitions.**
- 29-6A.2 Peddling by merchant of a store on a portion of a Chinatown sidewalk or mall, the College Walk Mall, the Sun Yat Sen Mall, or Historic Moiliili sidewalk.**
- 29-6A.3 Other restrictions and conditions for peddling on a portion of a sidewalk or mall.**
- 29-6A.4 Adoption of rules.**
- 29-6A.5 Violation—Summons or Citation—Arrest.**
- 29-6A.6 Penalty.**
- 29-6A.7 Article additional to Articles 8 and 10 with respect to use of mall.**

Sec. 29-6A.1 Definitions.

For the purpose of this article:

"Chinatown mall" means:

- (1) The Kekauike Mall, designated for this article as the area of Kekauike Street, including the abutting sidewalks, between Hotel Street and King Street; or
- (2) Any other mall that may be established or designated by ordinance within Chinatown.

"Historic Moiliili" means the area along both sides of South King Street between Old Stadium Park and Church Lane.

"Mall," when used generally in this article," means the College Walk Mall, Sun Yat Sen Mall, or a Chinatown mall.

"Merchant of a store" means the person actually operating a store, whether or not the person is the owner of the store or real property housing or underlying the store.

"Portion of a sidewalk or mall usable by a merchant for peddling" means the portion of a Chinatown sidewalk or mall, the College Walk Mall, the Sun Yat Sen Mall, or Historic Moiliili sidewalk upon which a merchant may peddle in accordance with Section 29-6A.2. If the portion is limited by the designated city department pursuant to that section, the phrase means only the limited portion.

(Added by Ord. 03-26, 12-33)

Sec. 29-6A.2 Peddling by merchant of a store on a portion of a Chinatown sidewalk or mall, the

College Walk Mall, the Sun Yat Sen Mall, or Historic Moiliili Sidewalk.

- (a) Except when prohibited under subsection (b):
- (1) A merchant of a store at ground level in Chinatown may peddle on a portion of the sidewalk or mall abutting the store as provided by this article.
 - (2) A merchant of a store that abuts College Walk Mall or Sun Yat Sen Mall at ground level may peddle on a portion of the mall abutting the store as provided by this article.
 - (3) A merchant of a store that abuts a Historic Moiliili sidewalk at ground level may peddle on the portion of the sidewalk abutting the store as provided by this article.

Except when limited to a lesser area pursuant to subsection (b), a merchant may peddle:

- (A) On any portion of the sidewalk within 18 inches perpendicular from the merchant's storefront wall; or
- (B) On any portion of the mall within 48 inches perpendicular from the merchant's storefront wall.

Notwithstanding the foregoing, a merchant of a store that abuts a Historic Moiliili sidewalk may peddle on any portion of the sidewalk within 48 inches perpendicular from the merchant's storefront wall except when limited to a lesser area pursuant to subsection (b). In no instance, however, shall the merchant peddle on any portion of a sidewalk or mall that extends laterally past the length of the merchant's storefront.

- (b) (1) The city executive department designated by the mayor shall prohibit a merchant from peddling on any portion of a sidewalk or mall if the department determines that the peddling will result in any of the following:
- (A) The material impedance or obstruction of pedestrian traffic on the sidewalk or mall;
 - (B) A violation of the federal Americans with Disabilities Act;
 - (C) Jeopardy to the public safety;
 - (D) An inconsistency with the objectives of the Chinatown special district as set forth under Section 21-9.60, et seq.; or
 - (E) The obstruction of a mailbox, fire hydrant, or curbside teller, freight chute, freight elevator, newsstand, public telephone enclosure, or other structure permitted under Article 8.
- (2) Alternatively, the designated city department may limit a merchant to peddling on a portion of a sidewalk or mall less than the 18 inches or 48 inches specified under subsection (a) if the department determines that the limitation is necessary to prevent any of the occurrences listed under subdivision (b)(1)(A) through (E). If imposing the limitation, the designated city department shall notify the merchant of the limited portion of the sidewalk or mall upon which the merchant may peddle.
- (c) No merchant of a store or other person shall violate a prohibition or limitation set by this section or the designated city department concerning the portion of a sidewalk or mall usable or not for peddling.

(Added by Ord. 03-26, 12-33)

Sec. 29-6A.3 Other restrictions and conditions for peddling on a portion of a sidewalk or mall.

- (a) A merchant of a store may peddle on a portion of an abutting sidewalk or mall only goods, wares, merchandise, foodstuffs, refreshments, or other kinds of property or services of the same or a similar character as available in the merchant's store; provided that a merchant shall not peddle any liquor as defined in HRS Section 281-1 on a sidewalk or mall.
- (b) (1) A merchant of a store shall not place any empty box, trash can, or debris on the portion of a sidewalk usable by the merchant for peddling. This prohibition shall not apply to the portion of a mall usable by a merchant for peddling.
- (2) A merchant of a store shall be subject to Article 4 with respect to littering on the portion of a sidewalk or mall usable by the merchant for peddling.
- (c) A merchant of a store shall not install any permanent structure on the portion of a sidewalk or mall usable by the merchant for peddling.
- (d) A merchant of a store or other person on behalf of such a merchant may stand beyond the portion of a sidewalk usable by the merchant for peddling when the merchant or person peddles goods, wares, merchandise, foodstuffs, or other kinds of property that are displayed on the sidewalk by the merchant.
- This subsection shall not apply:
- (1) When a merchant is prohibited under Section 29-6A.2(b)(1) from peddling on any portion of a sidewalk abutting the merchant's store; or
 - (2) To a merchant of a store abutting a mall or a person peddling on the mall on behalf of the merchant. Such a merchant or person shall stand and peddle only on the portion of the mall usable by the merchant for peddling.
- (e) A merchant of a store shall not cook, cut, trim, or otherwise prepare food for sale or consumption on the portion of a sidewalk or mall usable by the merchant for peddling. A merchant who uses a portion of a sidewalk or mall to peddle food shall comply with all relevant state laws and rules relating to food preparation, sale, and sanitation.

(Added by Ord. 03-26)

Sec. 29-6A.4 Adoption of rules.

The city executive department designated by the mayor may adopt rules to implement this article, including rules relating to the hours during which peddling on a sidewalk or mall is allowed. The rules shall be adopted in accordance with HRS Chapter 91. (Added by Ord. 03-26)

Sec. 29-6A.5 Violation—Summons or Citation—Arrest.

- (a) No person shall violate any provision of this article or rule adopted pursuant to this article.
- (b) An authorized police officer shall issue to an alleged violator a summons or citation in accordance with Article 9; provided that the police officer may physically arrest an alleged violator in lieu of issuing a summons or citation.

(Added by Ord. 03-26)

Sec. 29-6A.6 Penalty.

Any person violating any provision of this article or rule adopted pursuant to this article shall upon conviction be punished as follows:

- (1) By a fine of \$100.00 if the violation did not occur within two years of the occurrence of a previous violation of this article;
- (2) By a fine of \$250.00 if the violation occurred within two years of the occurrence of one previous violation of this article; or
- (3) By a fine of not less than \$500.00 nor more than \$1,000.00, imprisonment not exceeding 30 days, or both if the violation occurred within two years of the occurrence of two or more previous violations of this article.

For the purpose of this section, a "violation of this article" includes a violation of a rule adopted pursuant to this article.

(Added by Ord. 03-26)

Sec. 29-6A.7 Article additional to Articles 8 and 10 with respect to use of mall.

The use of a mall as authorized by this article shall be additional to the uses of a mall authorized under Article 8 and Article 10.
(Added by Ord. 03-26)

Article 7. Handbilling in the Waikiki Special Design District

Sections:

- 29-7.1 Purpose and intent.**
- 29-7.2 Definitions.**
- 29-7.3 Application.**
- 29-7.4 Areas in which handbilling is permitted.**
- 29-7.5 Penalty, summons or citation.**
- 29-7.6 Prohibited activity.**

Sec. 29-7.1 Purpose and intent.

- (a) The city council finds that reasonable regulation of handbilling activities upon certain public streets, sidewalks, alleys and other public places within Waikiki is a matter of compelling interest to the City and County of Honolulu. The city council finds a compelling need in this district to ensure the safety and welfare of both motorists and pedestrians.
- (b) The Waikiki district is the heart of the city's tourist industry and a major business, entertainment and recreation area for visitors and residents alike. In 1986, there were approximately 5.6 million visitors to the State of Hawaii. The visitor industry is an essential component of the economic vitality of the area and the state. On an average, there were approximately 66,000 visitors in the Waikiki district each day. In addition to this, the resident population of the Waikiki district is approximately 23,000 people. As a result, travel through the district is hindered by heavy pedestrian and vehicular traffic and congestion at all times of the day. Pedestrian traffic counts on the sidewalk at critical spots along Kalakaua Avenue alone during peak hours reach over 3,900 pedestrians per hour, an extraordinarily high volume. Daily pedestrian traffic on the mauka side of the street at the International Market Place in both directions during peak tourist season is estimated at 39,600. Peak season daily pedestrian traffic on both sides of the street exceeds 65,000. Similar extraordinarily high pedestrian traffic is also found on the sidewalks along Kuhio Avenue and sections of Lewers Street. The city's interest in open and attractive sidewalks extends throughout the Waikiki special district.
- (c) Handbilling activities conducted at or close to intersections, crosswalks, bus stops and driveways impede the flow of pedestrian and vehicular traffic, leading to erratic, evasive maneuvers and posing the hazard of diverting the attentions of and endangering drivers, pedestrians and those alighting from buses. Further, handbillers who obstruct the paths of pedestrians or who, without the consent of the pedestrians, thrust handbills in their faces or touch their persons or property, create hazardous situations, such as pedestrians stepping into busy streets or colliding with other pedestrians to avoid unwanted contacts with handbillers. This danger is minimized when handbillers are prohibited from engaging in handbilling in or in close proximity to such safety sensitive areas as driveways, crosswalks, bus stops and intersections.
Accordingly, this article is designed to protect the safety of the public and to restrict handbilling activities in only those areas creating the greatest hazards to pedestrian and motorist safety.
- (d) The provisions of this article are declared to be necessary for the accomplishment of the following purposes:
 - (1) To ensure that persons desiring to engage in handbilling activities in Waikiki are given a reasonable opportunity to do so;
 - (2) To ensure the safe, unrestricted, free and orderly flow of vehicular and pedestrian traffic on the most hazardous portions of sidewalks in Waikiki; and
 - (3) To protect the visitor industry in the state, the heart of which is the Waikiki peninsula, by protecting the safety of our visitors.
- (e) The provisions of this article are not intended to cover the dispensing of written materials by newsracks or to peddling activities covered by Article 6.

(Added by Ord. 88-83; Am. Ord. 98-12)

Sec. 29-7.2 Definitions.

As used in this article:

"Department" means the department of budget and fiscal services of the City and County of Honolulu.

"Director" means the director of the department of budget and fiscal services of the City and County of Honolulu.

"Handbilling" means the distribution by an individual of any printed or written matter or other informative material. The term "handbilling" shall not include distribution of any printed or written matter by means of a "dispensing rack," as defined in Section 29-11.2(a), any other structure or enclosure constructed by or under the direction of the city for purposes of dispensing printed or written material, or a newsstand permitted under Section 29-8.2, and shall not include the sale or offer for sale or rent or offer for rent of any printed or written material or any other informative material.

"Informative material" means any photograph, map, diagram, rendering, drawing, painting, graph, photocopy, print, relief, engraving, embossed material, punch card, audio, video and/or computer tape, record, compact or laser disc, computer diskette or any other material intended to convey information aurally, visually, or by touch, whether in language, code or otherwise, which has no purpose apart from the conveyance of the information, depiction or sound conveyed, but does not include money or any negotiable instrument.

(Added by Ord. 88-83; Am. Ord. 98-12, 00-02)

Sec. 29-7.3 Application.

The provisions of this article apply to Kalakaua and Kuhio Avenues between Kalaimoku Street and Kapahulu Avenue and Lewers Street between Kalakaua Avenue and Kalia Road and the sidewalks thereof.

The provisions of this article also apply to the appropriate public sidewalk areas of streets intersecting the portions of Kalakaua Avenue, Kuhio Avenue, and Lewers Street listed above.

(Added by Ord. 88-83; Am. Ord. 00-02)

Sec. 29-7.4 Areas in which handbilling is permitted.

- (a) Handbilling is permitted on all public sidewalks to which this article applies, except:
 - (1) In any area where clear pedestrian passage on the public sidewalk is less than four feet wide;

- (2) On the portion of a public sidewalk adjacent to any area designated as a bus stop or within 10 feet of either end of the bus stop. In areas where the length of the bus stop is not clearly identified, the front of the bus stop begins at the bus stop sign and extends 50 feet back from the bus stop sign;
 - (3) Within a midblock crosswalk area;
 - (4) On the portion of a public sidewalk crossed by a public or private driveway or within 10 feet of either side of the driveway; or
 - (5) Within any street corner area.
- (b) For purposes of this section:
- (1) "Midblock crosswalk area" means the sidewalk area which falls between the two lines 15 feet beyond each side of a marked midblock crosswalk (as defined by the crosswalk lines delineated on the street pavement) and perpendicular to the curb. (See examples of midblock crosswalk areas in Attachment "A," Figures 29-7A.1, 29-7A.5 and 29-7A.7.)
 - (2) Street Corner Areas.
 - (A) At street corners other than those subject to paragraph (B) or (C), "street corner area" means the sidewalk area at the intersection of two streets, circumscribed by the curbs, the property lines abutting the sidewalk area, and the following lines:
 - (i) The line including the point along the curb of one street either: 10 feet beyond the far side of a marked corner crosswalk and perpendicular to the curb; or, where there is no marked corner crosswalk, 25 feet from the curb line of the intersecting street and parallel to the curb line; and
 - (ii) The line including the point along the curb of the intersecting street either: 10 feet beyond the far side of a marked corner crosswalk and perpendicular to the curb; or, where there is no marked crosswalk, 25 feet from the curb line of the first street and parallel to the curb line.
 (See street corner areas marked diagonally on Attachment "A," Figures 29-7A.2, 29-7A.3 and 29-7A.4.)
 - (B) Except as provided in paragraph (C), for street corners at a "T" intersection, at the two corners created on the stem street side of the crossbar street, the street corner area provision of this subdivision shall apply, and on the side of the crossbar street opposite the stem street, the midblock crosswalk area provisions of subdivision (1) shall apply. (See areas marked diagonally on Attachment "A," Figures 29-7A.5, 29-7A.6 and 29-7A.7.) For purposes of this definition, a "T" intersection is an intersection where one street, designated the "stem" street, terminates at another street, designated the "crossbar" street.
 - (C) At the ewa side of the crosswalk crossing Beach Walk at its intersection with Kalakaua Avenue and at the ewa side of the ewa crosswalk crossing Saratoga Road at its intersection with Kalakaua Avenue, the "street corner area" shall be determined by application of the midblock crosswalk area provision of subdivision (1). Additionally, with respect to the intersection of Kalakaua Avenue and Saratoga Road, the area where handbilling is prohibited shall include the entire traffic island at that intersection.
 - (3) For crosswalks that are delineated by two roughly parallel lines defining portions of the perimeter of the crosswalk, including crosswalks at intersections where pedestrians are permitted to cross in all directions at the same time ("Barnes Walks"), distances shall be measured from the point where the outer edges of the roughly parallel lines intersect the curb; provided that if they do not intersect the curb, distances shall be measured from the point where the outer edges of the roughly parallel lines would intersect the curb if they were extended to intersect the curb. (See Attachment "A," Figures 29-7A.8 and 29-7A.9.) For those crosswalks that are not delineated by roughly parallel perimeter lines, and which are defined by a series of roughly parallel rectangular blocks within the crosswalk itself, distances shall be measured from the points where the curb intersects the lines projected through the midpoints of the widths of the two full-length rectangular blocks nearest to the curb line. (See Attachment "A," Figure 29-7A.10.) For purposes of this subdivision: the "width" of a rectangular block shall be the shorter side of the block, the side roughly perpendicular to the nearest curb line; and a "full length" rectangular block is a block at least 80 percent of the length of the longest rectangular block in the crosswalk.
 - (4) "Corner crosswalk" means a crosswalk, any portion of which is within 25 feet of the closest street corner. The measurement rule of subdivision (3) shall not apply to this definition.
 - (5) "Curb line" means the line of a curb prior to its becoming curved at a street corner.
 - (6) "Far side" of a marked corner crosswalk is the side of the crosswalk further from the closest street corner.
 - (7) "Midblock crosswalk" means any crosswalk other than a corner crosswalk.
- (c) The figures in Attachment A are intended to illustrate the application of the regulations to midblock crosswalk areas and to street corner areas; however, the figures are not intended to represent every crosswalk or street corner in the area regulated by this article.
- (Added by Ord. 88-83; Am. Ord. 98-12, 00-02)

Sec. 29-7.5 Penalty, summons or citation.

- (a) Penalty. Any person conducting handbilling in violation of any provision of this article shall be subject to a fine of \$25.00 for each offense.
- (b) Summons or Citation.
 - (1) There shall be provided for use by authorized police officers, or authorized special police officers, a form of summons or citation for use in citing any violation of this article which does not mandate the physical arrest of the violator. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed as to include all necessary information to make the same valid within the laws and regulations of the state and city. Said summons or citation shall instruct such person to report to the violations bureau of the district court for the district of Honolulu. Each such violator may, within seven days after receipt of such summons, appear at such violations bureau and post a bail bond in such amounts as may be set by the administrative judge of the district court for appearance on the date as may be set out for such person to appear before the district court. Upon failure to appear on such date, said bail bond shall be deemed forfeited. Bail forfeiture by mail shall be permitted.
 - (2) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe the giving to the violator of a carbon copy of the citation and provide for the disposition of the original and any other copies.
 - (3) Every citation shall be consecutively numbered, and each carbon copy shall bear the number of its respective original.

(Added by Ord. 88 83)

Sec. 29-7.6 Prohibited activity.

Individuals distributing handbills shall be prohibited from depositing any handbills upon any public place or upon any structure or landscaping on any public place at any time. (Added by Ord. 98-12)

Article 8. Structures on, Above or Below a Public Sidewalk

Sections:

- 29-8.1 Permit required.**
- 29-8.2 Newsstands--Permit application--Fees--Conditions.**
- 29-8.3 Public telephone enclosures.**
- 29-8.4 Curbside tellers.**
- 29-8.5 Freight elevators and freight chutes.**
- 29-8.6 Public convenience and necessity.**
- 29-8.7 Nonwaiver of other requirements.**
- 29-8.8 Payment of fees.**
- 29-8.9 Revocation of permits.**
- 29-8.10 Unlawful to erect gasoline pumps on sidewalks--Penalty.**
- 29-8.11 Violation--Penalty.**

Sec. 29-8.1 Permit required.

No person shall establish, construct, maintain, keep or operate a newsstand, public telephone enclosure, curbside teller, freight elevator, freight chute or any other structure or appliance on, above or below a public sidewalk or mall without a permit as provided herein, or as may be provided by law. (Sec. 26 8.1, R.O. 1978 (1983 Ed.))

Sec. 29-8.2 Newsstands--Permit application--Fees--Conditions.

- (a) The director of finance shall issue permits authorizing newsstands on public sidewalks in accordance with the provisions and conditions contained herein.
- (b) Each permit shall be valid for the period that fees are assessed and paid.
- (c) A fee of \$15.00 per annum for each newsstand covered by the permit or added by an amendment thereto, shall be charged and collected by the director of finance at the time of the issuance, reissuance or amendment of the permit. Only one permit shall be issued to each applicant listing location and size of each newsstand. Decals bearing a number and the expiration date marked thereon shall be issued for each newsstand after payment of the permit fee. After receipt of the decal, the applicant shall affix the decal in plain sight on the front of the newsstand. The use of the decal is subject to the following conditions:
 - (1) Upon loss, defacement or destruction of a decal, the applicant shall submit an application for a new decal giving such information as shall be required by the director of finance.
 - (2) Upon filing of such application, the director of finance shall issue a new decal and charge the applicant a fee of one dollar therefor.
 - (3) If the director of finance finds that an applicant's newsstand does not have the decal affixed thereto, the director shall order the removal of such stand until such time an application for a permit is filed and a decal, issued therefor, is affixed to such stand.
- (d) The permit shall be nontransferable.
- (e) Upon the breach of any condition or violation of any provision herein, the director of finance shall suspend the permit until the breach of condition or violation is corrected.
- (f) A written application shall be filed with the director of finance which shall include:
 - (1) The name of the applicant and the name under which the business is conducted;
 - (2) The address and telephone number of the applicant;
 - (3) The total number of newsstands and location of each newsstand to be covered by the permit;
 - (4) An authorization for the chief of police to remove and impound any newsstand located in violation of this article and agreement to hold the city, its officers and employees free from any claim for damages or losses resulting from the removal or impounding of such newsstand;
 - (5) The signature of the applicant or of a person authorized to execute instruments on behalf of the applicant;
 - (6) The application shall be accompanied by a certificate of insurance or a copy of a public liability insurance policy issued by a carrier to be approved by the director of finance, and naming specifically the applicant, the city and the State of Hawaii and such other parties designated by the applicant as assureds, and generally the owners, lessees and occupants of property abutting the public sidewalk where each newsstand is located as assured, covering any claim or liability for damages, injuries or deaths, resulting from the placement, condition or use of the newsstands or in any way connected with such newsstands. The policy shall also include automatic coverage for newsstands added or relocated after the application is filed. The minimum amount of coverage under such policy shall be \$100,000.00 for injuries or death to any one person, \$300,000.00 for injuries or deaths involving two or more persons arising from any one occurrence, and \$10,000.00 property damage for each occurrence. The policy shall be kept in force during the entire period of the permit. Neither the applicant nor the carrier shall cancel the policy, except upon 30 days prior written notice to the director of finance.
- (g) Hazardous Newsstands.
 - (1) The chief of police shall send written notice to the permittee whenever the chief of police determines that the condition or location of a newsstand constitutes a hazard to the public.
 - (2) Within 24 hours of receipt of such notice, the permittee shall remove or correct the condition of the newsstand. The chief of police shall send written notice to the director of finance at the end of such period stating what action, if any, the permittee has taken. If the permittee has failed to take the necessary action, the chief of police shall remove and impound said newsstand and shall so notify the permittee. Any impounded newsstand may be recovered by the permittee upon the payment of five dollars to cover the cost of removal. Failure of the

- permittee to pay such charge and claim such newsstand within 30 days after notification of the removal shall be deemed an authorization by the permittee to destroy or otherwise dispose of such newsstand.
- (3) Upon receipt of notification that the permittee has failed to remove or correct the condition of the newsstand, the director of finance shall forthwith suspend the permit and notify the council of such suspension.
- (h) Conditions of Permit. The permit shall be issued subject to the following conditions:
- (1) The permittee shall maintain a current public liability insurance policy, required by this section, at all times during the effective period of the permit.
 - (2) The permittee shall not add any newsstand after the filing of the application, without amending the permit to specify the number of additional newsstands.
 - (3) The permittee shall not install any newsstand that exceeds the following dimensions in its normal operating position: 22 inches in width, 50 inches in height and 24 inches in depth. The width of the unit may be increased by five inches to accommodate the coin box only.
 - (4) No newsstand shall be permanently attached or affixed to a public sidewalk or mall.
 - (5) The permittee shall give written notice to the director of customer services whenever a newsstand is permanently removed without replacement.

(Sec. 26-8.2, R.O. 1978 (1983 Ed.); Am. Ord. 05-038)

Sec. 29-8.3 Public telephone enclosures.

- (a) The director of finance shall issue permits authorizing public telephone enclosures on or over public sidewalks and malls in accordance with the provisions and conditions contained herein.
- (b) Each permit shall be valid for the period that fees are assessed and paid.
- (c) A fee of 10 percent of the gross income from each public telephone enclosure covered by the permit, or added by amendment thereto, shall be collected by the director of finance each and every month. Only one permit shall be issued to each applicant.
- (d) The permit shall be nontransferable, except to the mortgagee of a duly recorded mortgage or to a purchaser at a foreclosure sale conducted pursuant to the terms and conditions of said mortgage. The transferee shall have all of the rights granted by the permit and shall be subject to all of the requirements contained herein.
- (e) Upon the breach of any condition or violation of any provision herein, the director of finance shall suspend the permit until the breach of condition or violation is corrected.
- (f) The permittee shall surrender such permit to the director of finance upon the removal of all public telephone enclosures authorized by said permit.
- (g) A written application shall be filed with the director of finance which shall include:
 - (1) The name of the applicant and the name under which the business is conducted;
 - (2) The address and telephone number of the applicant;
 - (3) The total number of public telephone enclosures to be covered by the permit;
 - (4) The location of each public telephone enclosure;
 - (5) The name and address of any mortgagee under a duly recorded mortgage to which the public telephone enclosures would be subject;
 - (6) An authorization for the chief of police to remove and impound any public telephone enclosure located in violation of the ordinance and an agreement to hold the city, its officers and employees free from claim for damages or losses resulting from the removal or impounding of such enclosure;
 - (7) The signature of the applicant or of a person authorized to execute instruments on behalf of the applicant.
- (h) The following documents shall be filed with each application:
 - (1) A certificate of insurance or a copy of a public liability insurance policy, issued by a carrier, to be approved by the director of finance, and naming specifically the applicant, the city and the State of Hawaii, and such other parties designated by the applicant as assureds, and generally the owners, lessees and occupants of property abutting the public sidewalk or mall where each public telephone enclosure is located as assureds, covering any claim or liability for damages, injuries or deaths, resulting from the placement, condition or use of the public telephone enclosure or in any way connected with such enclosure. The policy shall also include automatic coverage for public telephone enclosures added or relocated after the application is filed. The minimum amount of coverage under such policy shall be \$100,000.00 for injuries or death to any one person, \$300,000.00 for injuries or deaths involving two or more persons arising from any one occurrence, and \$10,000.00 property damage for each occurrence. The policy shall be kept in force during the entire period of the permit. Neither the applicant nor the carrier shall cancel the policy, except upon 30 days prior written notice to the director of finance.
 - (2) Written approval from the chief of police that the requested location and size of each public telephone enclosure does not constitute a hazard to or impede the traffic of pedestrians or vehicles.
 - (3) Written approval from the building superintendent that the size, design, construction and specification of each particular type of public telephone enclosure are satisfactory for public safety.
 - (4) Written authorization signed by any mortgagee under a duly recorded mortgage to which the public telephone enclosures are subject.
- (i) Hazardous Enclosures.
 - (1) The chief of police shall send written notice to the permittee and the mortgagees mentioned herein whenever the chief determines that the condition or location of a public telephone enclosure constitutes a hazard to the public or is impeding traffic. A copy of such notice shall be sent to the director of finance.
 - (2) Within 24 hours of receipt of such notice, the permittee and/or mortgagee shall remove, or correct the condition of the public telephone enclosure. The chief of police shall send written notice to the director of finance at the end of such period stating what action, if any, the permittee has taken. If the permittee and/or mortgagee has failed to take the necessary action, the chief of police shall remove and impound said enclosure. Upon the payment of a \$25.00 charge for the removal and impounding of each of such enclosures, the permittee and/or

mortgagee may reclaim said enclosure. Failure to pay such charge and to claim said enclosure within 30 days after notification of such impounding shall be deemed an authorization by the permittee and/or mortgagee to destroy or otherwise dispose of such enclosure.

- (3) Upon receipt of notification that the permittee and/or mortgagee has failed to take the necessary action, the director of finance shall forthwith suspend the permit and notify the council of suspension.
- (j) Conditions of Permit. The permit shall be issued subject to the following conditions:
- (1) The permittee shall maintain a current public liability insurance policy, required by this section, at all times during the effective period of the permit.
 - (2) The permittee shall not add or relocate any public telephone enclosure after the filing of the application, without amending the permit to specify the number and locations of additional public telephone enclosures and the new locations of relocated public telephone enclosures and without the approval of the chief of police and the building superintendent as provided under subsection (h) for such additional or relocated enclosures. The approval of the building superintendent shall not be necessary if the public telephone enclosure is of a type previously approved.
 - (3) The permittee shall give written notice to the director of finance whenever a public telephone enclosure site is permanently vacated.

(Sec. 26-8.3, R.O. 1978 (1983 Ed.); Am. Ord. 96-58)

Sec. 29-8.4 Curbside tellers.

- (a) All provisions contained in Section 29-8.3 shall be applicable to curbside tellers, except as obviously limited to public telephone enclosures and except as otherwise provided herein.
- (b) The applicant need not be franchised; however, only applicants who are authorized to do business in Hawaii as a bank, savings and loan association, credit union or financial services loan company shall be eligible for such permit.
- (c) A fee of \$120.00 per annum for each curbside teller covered by the permit, or added by amendment thereto, shall be charged and collected by the director of finance at the time of issuance, reissuance or amendment of the permit. Only one permit shall be issued to each applicant.
- (d) The provisions regarding removal, impounding and reclaiming of public telephone enclosures shall not be applicable to curbside tellers.

(Sec. 26-8.4, R.O. 1978 (1983 Ed.); Am. Ord. 96-58)

Sec. 29-8.5 Freight elevators and freight chutes.

- (a) All provisions contained in Section 29-8.3 shall be applicable to freight elevators and freight chutes, except as obviously limited to public telephone enclosures and except as otherwise provided herein.
- (b) The applicant need not be franchised; however, the applicant must either own, lease or be doing business on the property abutting the public sidewalk or mall at the location of the freight elevator or freight chute.
- (c) A fee of \$120.00 per annum for each freight elevator and freight chute covered by the permit, shall be charged and collected by the director of finance at the time of issuance, reissuance or amendment of the permit. Only one permit shall be issued to each applicant.
- (d) The provisions regarding removal, impounding and reclaiming of public telephone enclosures shall not be applicable to freight elevators and freight chutes.
- (e) The provisions contained in Section 29-8.3 (h) pertaining to the approval of building superintendent shall be applicable to freight elevators.
- (f) The provisions contained in Section 29-8.3 (h) pertaining to automatic coverage for additional enclosures shall not be applicable to freight elevators and freight chutes.
- (g) Freight chutes shall be covered by two equal size doors each hinged to the side of the chute perpendicular to length of the sidewalk or mall. The doors shall be flush to the sidewalk or mall when closed and shall be locked. The outside surface shall be of a nonskid finish and contain no openings except as necessary for the locking mechanism. The doors shall be capable of supporting 300 pounds per square foot evenly distributed. Each door shall be locked into a 90 degree position when open. Prior to opening, an attendant shall be stationed on the sidewalk at the side of the chute until the doors are locked into the ninety degree position. At no time shall the doors and goods completely block the flow of pedestrians on the sidewalk or mall. The doors shall not remain open nor shall goods remain on the sidewalk or mall for more than 15 minutes during any period of use.
- (h) The applicant shall submit written approval of the department of public works of the city that the freight chute and doors are in compliance with the provisions of this article when applying for a permit.
- (i) Nothing contained in this section shall be construed to permit the installation of freight elevators and chutes other than those in existence at the effective date of this article.

(Sec. 26-8.5, R.O. 1978 (1983 Ed.))

Sec. 29-8.6 Public convenience and necessity.

The permits provided herein shall be issued subject to a finding by the director of finance, upon evidence submitted by the applicant, that the public convenience and necessity require the issuance thereof. (Sec. 26-8.6, R.O. 1978 (1983 Ed.))

Sec. 29-8.7 Nonwaiver of other requirements.

No provision contained in this article shall be interpreted to modify any state or city law or regulation pertaining to fees, licenses, permits, standards and specifications of the equipment and structures covered by this article. (Sec. 26-8.7, R.O. 1978 (1983 Ed.))

Sec. 29-8.8 Payment of fees.

All fees shall be paid in advance on a yearly basis computed from the first of July to the 30th of June. The fees for any structure placed on the sidewalk or mall after the first of July shall be prorated on a monthly basis. No refund of fees shall be made. (Sec. 26-8.8, R.O. 1978 (1983 Ed.))

Sec. 29-8.9 Revocation of permits.

Notwithstanding any other provision herein to the contrary, any permit may be revoked at any time by the council. (Sec. 26-8.9, R.O. 1978 (1983 Ed.))

Sec. 29-8.10 Unlawful to erect gasoline pumps on sidewalks--Penalty.

- (a) It is unlawful for any person to erect or place or permit, or cause to be erected or placed any gasoline pumps upon any sidewalk or mall in the city.
- (b) Any person violating this provision shall, upon conviction, be punished by a fine not to exceed five dollars for each day of violation.

(Sec. 26-8.10, R.O. 1978 (1983 Ed.))

Sec. 29-8.11 Violation--Penalty.

Any person establishing, constructing, maintaining, keeping or operating a newsstand, public telephone enclosure, curbside teller, freight elevator, freight chute or any other structure or appliance on, above or below a public sidewalk or mall without a valid permit as provided herein, shall upon conviction be deemed guilty of a misdemeanor and punished by a fine not exceeding \$1,000.00 or by imprisonment not exceeding one year, or by both. (Sec. 26-8.11, R.O. 1978 (1983 Ed.))

Article 9. Procedure on Arrest

Sections:

- 29-9.1 Procedure.**
- 29-9.2 Summons or citation.**

Sec. 29-9.1 Procedure.

Any authorized police officer, upon making an arrest for a violation of this chapter, shall take the name and address of the alleged violator and shall issue to the alleged violator in writing a summons or citation hereinafter described, notifying the alleged violator to answer to the complaint to be entered against such person at a place and at a time provided in said summons or citation. (Sec. 26 9.1, R.O. 1978 (1983 Ed.))

Sec. 29-9.2 Summons or citation.

- (a) There shall be provided for use by authorized police officers, a form of summons or citation for use in citing violators of this chapter where the circumstances do not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawaii and the City and County of Honolulu.
- (b) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving to the violator a carbon copy of the citation and provide for the disposition of the original and any other copies.
- (c) Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original. (Sec. 26-9.2, R.O. 1978(1983 Ed.))

Article 10. Use of Malls

Sections:

- 29-10.1 Declaration of intent.**
- 29-10.2 Definitions.**
- 29-10.3 Powers and duties of the department.**
- 29-10.4 Appeals.**
- 29-10.5 Penalty--Procedure on arrest--Summons or citation.**
- 29-10.6 Severability.**

Sec. 29-10.1 Declaration of intent.

The council of the City and County of Honolulu finds that:

- (a) Indiscriminate and uncontrolled use of the malls by individuals, commercial establishments fronting the malls and other organizations and deterioration of the aesthetic aspects of the malls are detrimental to the public interest; and
- (b) The department of parks and recreation is able to provide effective control and coordination of permittees' use of the malls, and to preserve or upgrade the aesthetic aspects of the malls; the council therefore delegates to the department of parks and recreation the authority to control and coordinate permittees' use of the malls in accordance with the terms of this article. The department may post signs to prohibit skateboarding and other activities regulated under Section 10-1.2 when necessary for the protection and preservations of the malls and facilities thereon, or the health, safety and welfare of persons or property.

- (c) The department of transportation services is able to provide effective control and coordination of vehicular traffic on the malls; the council therefore delegates to the department of transportation services the authority to control and coordinate vehicular traffic on the malls.

(Sec. 26-10.1, R.O. 1978 (1983 Ed); Am. Ord. 91-29)

Sec. 29-10.2 Definitions.

“Council” means the city council.

“Department” means the department of parks and recreation, unless the context otherwise requires.

“Event” means the use of the malls (1) for membership drives sponsored by any person; and/or (2) for organized activities sponsored by any person on any portion of the malls, whether for profit or not; and/or (3) for meetings, which are defined to mean any gatherings on the malls sponsored by any person; and/or (4) for speeches or other communications made by any person and addressed to other users of the mall for the purpose of influencing their views on any subject.

“Malls district” means the area from a private property line to a private property line as to the width of the mall, and physical demarcation indicating the length of the mall.

“Merchant” means any property owner who has been assessed for the malls improvement district, including lessees or tenants of such property. (Sec. 26-10.2, R.O. 1978 (1983 Ed.); Am. Ord. 02-51)

Sec. 29-10.3 Powers and duties of the department.

- (a) Applications. The department shall receive and review applications for permits for the use of the malls by any person where required by subsection (b) of this section, on forms approved by the department. The filing of applications shall be pursuant to rules and regulations adopted by the department. Said applications for permits shall be filed not fewer than 10 working days prior to the date of the proposed event. There shall be no charge for the filing of an application. The department shall inform the applicant in writing of any approval or denial of an application by delivering or mailing to the last known address of the applicant a copy of the department's decision within five working days before the proposed event.
- (b) Permits. The department shall issue permits for the use of a particular area of a mall or malls for events, together with any activities reasonably related thereto, whenever such events promote: the safety, health and welfare of the public; the use of the malls for which they were established; the interest of the malls district; or any other community endeavors sponsored, undertaken or promoted by duly established organizations. The department shall determine and establish by rules as prescribed herein the number and boundaries of areas within each mall which shall reasonably promote the safety, health and welfare of the public; the use of the malls for which they were established; the interest of the malls district; or any other community endeavors sponsored, undertaken or promoted by duly established organizations.
- All permits may be issued subject to the following restrictions:
- (1) That such events do not impair the health, safety and welfare of the users of the malls and of the merchants and the property owners in the malls, and do not violate any statutes, ordinances or rules or regulations having the effect of law;
 - (2) No permit shall be granted for more than seven consecutive calendar days in any calendar year;
 - (3) No permit shall be issued for more than one event in a particular area of a mall during a given period; provided, that several areas of a mall or malls may be used concurrently for such event;
 - (4) No permit shall be issued to any person for an event in a particular area of a particular mall more than once during a calendar year; provided, that any events sponsored by merchants shall be done collectively as an association of merchants and not individually; and provided further, that any person who has the privilege of using a particular mall during a calendar year as provided herein, may submit another application, and the department may issue a permit to such person if there are no conflicts in the use of the malls granted to other permittees, or no applicant has submitted a request for the use of the malls for the date or period requested by such prior user of the mall; and
 - (5) A security deposit for each day of use for the purpose of cleaning up the malls if a permittee fails so to do, or as reimbursement for any damage to plants or other property of the city or to any private property fronting or situated alongside the malls. Such deposit shall be returned to the applicant if the foregoing situations have not occurred; provided, that if such deposit has been held for more than a month, interest at the prevailing rate on a month to month basis shall be paid by the city.
The department shall establish monetary deposit schedules based on the number of people utilizing a specific area for which a permit has been issued, the term of the permit and the type of activity; if a permittee charges admission to the permittee's functions or activities, the director shall require that the permittee obtain a public liability insurance policy which names the City and County of Honolulu as an insured party.
- (c) Advisory Function of the Department. The department shall recommend to the merchants or the property owners as the case may be: (1) appropriate renovations or repairs to facades of buildings fronting the malls; (2) appropriate renovations or repairs to overhanging signs and permanent marquees fronting the malls; and (3) recommend proposals to preserve or upgrade the aesthetic aspects of the malls to the appropriate city agency or merchants.
- (d) Control of Repairs and Traffic.
- (1) The department shall control and coordinate pedestrian traffic on, and use of, the malls.
 - (2) The department of transportation services shall control and coordinate vehicular traffic on the malls, including the timing and coordination of vehicles on the malls for the purpose of repairing or removing public utility services or in connection with construction on real property abutting the malls.
The control and coordination authority of this subdivision, however, shall not apply to an “authorized maintenance vehicle,” as defined under Section 15-2.4, when operated on the Fort Street Mall as such a vehicle.
- (e) Newsstands, Public Telephone Enclosures, Dumpsters and so forth. The department shall confer with the director of finance relative to permits and placement of newsstands, public telephone enclosures, freight elevators, freight chutes, and curbside tellers, all of which are under the jurisdiction of the director of finance as provided in Article 8 of this chapter. The department, in consultation with the department of land utilization, may allow the temporary placement of dumpsters

on a mall during a period of construction, where the city has entered into a development agreement for construction on the mall and where the establishments abutting the mall cannot accommodate the dumpster on their property during the period of construction.

- (f) Rules and Regulations. To promulgate and adopt rules and regulations, including rules of procedure for the suspension or revocation of permits and such other adjudicatory functions, all pursuant to HRS Chapter 91, as amended which are not inconsistent with the provisions contained herein.
- (g) Hearings.
 - (1) For revocation or suspension of permit. To conduct hearings pursuant to the provisions of HRS Chapter 91, as amended, before revoking or suspending any permit. No hearing shall be required as a prerequisite to the issuance of any permit.
 - (2) Notice of Determination. If after the hearing it is determined that a permit shall be revoked or suspended, the applicant shall be informed in writing and in the form as provided in HRS Chapter 91, as amended.

(Sec. 26-10.3, R.O. 1978 (1983 Ed.); Am. Ord. 91-29, 02-50)

Sec. 29-10.4 Appeals.

An applicant whose permit for the use of the malls has been denied, revoked or suspended by the department may file within 30 days after receipt of said revocation, suspension or denial an appeal for a hearing with the city council. (Sec. 26-10.4, R.O. 1978 (1983 Ed.))

Sec. 29-10.5 Penalty--Procedure on arrest--Summons or citation.

- (a) Penalty. Any person violating the provisions of this article shall be, upon conviction, subject to a fine of \$250.00 or 30 days in the city jail, or both.
- (b) Procedure on Arrest. Any authorized police officer, or authorized special police officer, upon making an arrest for a violation of this article, shall take the name and address of the alleged violator and shall issue to the alleged violator in writing a summons or citation hereinafter described, notifying the alleged violator to answer to the complaint to be entered against such person at a place and at a time provided in said summons or citation.
- (c) Summons or Citation.
 - (1) There shall be provided for use by authorized police officers or authorized special police officers, a form of summons or citation for use in citing violators of this article which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawaii and the City and County of Honolulu.
 - (2) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving to the violator a carbon copy of the citation and provide for the disposition of the original and any other copies.
 - (3) Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

(Sec. 26-10.5, R.O. 1978 (1983 Ed.))

Sec. 29-10.6 Severability.

The provisions of this article are declared to be severable. In accordance therewith, if any portion of said article is held invalid for any reason, the validity of any other portion of this article shall not be affected and if the application of any portion of this article to any person, property or circumstance is held invalid, the application hereof to any other person, property or circumstance shall not be affected. (Sec. 26-10.6, R.O. 1978 (1983 Ed.))

Article 11. Publication Dispensing Racks in Waikiki

Sections:

- 29-11.1 Applicability.**
- 29-11.2 Definitions.**
- 29-11.3 Location and installation of publication dispensing rack enclosures.**
- 29-11.4 Publication dispensing rack enclosures.**
- 29-11.5 Publication dispensing rack inserts.**
- 29-11.6 Publication dispensing rack space permits.**
- 29-11.7 Method of allocation and reallocation of publication dispensing rack spaces.**
- 29-11.8 Unallocated, abandoned or surrendered publication dispensing rack spaces.**
- 29-11.9 Installation, maintenance, and repair of publication dispensing enclosures, spaces, and inserts.**
- 29-11.10 Temporary dislocations.**
- 29-11.11 Prohibitions.**
- 29-11.12 Liability.**
- 29-11.13 Enforcement.**
- 29-11.14 Penalty.**
- 29-11.15 Rules.**
- 29-11.16 Severability.**

Sec. 29-11.1 Applicability.

The provisions of this article shall apply to publication dispensing devices, publication dispensing rack enclosures and publication dispensing rack spaces throughout the Waikiki special district. (Added by Ord. 02-10)

Sec. 29-11.2 Definitions.*[*Editor's Note: This section may be amended pursuant to Sections 6 and 7 of Ordinance 02-10.]

When used in this article, unless another meaning is clear from the context, the following terms shall have the following meanings:

- "Allocation" means the triennial allocation made by the director under Section 29-11.6(c)(1).
 - "City-installed," "city shall install," "installed by the city," or words of similar import shall mean installation, undertaken by or caused to be undertaken by the city.
 - "Director" means the director of customer services of the City and County of Honolulu, or the director's duly authorized subordinate.
 - "Insert," when used as a noun, means a publication dispensing rack insert.
 - "Install" includes construct, erect, fabricate and affix.
 - "Location" means a site designated by the director for a group of the city-installed publication dispensing rack enclosures situated in the Waikiki special district pursuant to this article.
 - "Permit" means a paid publication dispensing rack space allocation or reallocation invoice issued pursuant to this article.
 - "Permit period" means the three-year period for which spaces are allocated under Section 29-11.6(c)(1).
 - "Permittee" means a person to which or to whom a publication dispensing rack permit has been issued pursuant to this article.
 - "Publication" means any written or printed matter, including but not limited to, daily and/or periodical newspapers and visitor information publications, but may exclude any "handbill" defined in rules adopted by the director pursuant to Section 29-11.15 if such rules provide that handbills, as so defined, shall be excluded.
 - "Publication dispensing device" means any stand, box, rack or other device, other than a publication dispensing rack enclosure or a publication dispensing rack insert, used to dispense any publication. For purposes of this definition, a natural person shall not be deemed a device.
 - "Publication dispensing rack enclosure" or "enclosure" means a structure installed by the city in the Waikiki special district with spaces in which publication dispensing rack inserts may be inserted.
 - "Publication dispensing rack insert" means a box, insert or rack with a clear plastic face that is owned by a permittee, that is designed to be inserted into a publication dispensing rack space, and that is constructed to hold and display a publication.
 - "Publication dispensing rack space" or "space" means an area within a publication dispensing rack enclosure that is constructed to hold a publication dispensing rack insert to display and dispense a publication.
 - "Publisher" means an owner or authorized agent of the owner of a publication. The director of customer services may adopt rules defining the term "owner" or "authorized agent" for purposes of this definition.
 - "Reallocation" means a reallocation of unallocated, abandoned or surrendered spaces made by the director pursuant to Section 29-11.6(c)(2).
 - "Sidewalk" means that portion of a street between a curb line or the pavement of a roadway, and the adjacent private or public property line, whichever the case may be, intended for the use of pedestrians, including any setback areas acquired by the city for road widening purposes. The term shall also include any "mall," as that term is defined in Section 29-10.2.
 - "Twelve-inch publication dispensing rack enclosure" means a publication dispensing rack enclosure designated as such by the director under Section 29-11.4.
 - "Twelve-inch publication dispensing rack insert" means an insert designed to fit snugly within a space in a 12-inch publication dispensing rack enclosure.
 - "Twenty-four-inch publication dispensing rack enclosure" means a publication dispensing rack enclosure designated as such by the director under Section 29-11.4.
 - "Twenty-four-inch publication dispensing rack insert" means an insert designed to fit snugly within a space in a 24-inch publication dispensing rack enclosure.
 - "Unallocated publication dispensing rack space" means a publication dispensing rack space that has not been allocated in the most recent allocation under Section 29-11.6(c)(1) or reallocated since that time under Section 29-11.6(c)(2).
 - "Waikiki special district" means the Waikiki special district identified in Chapter 21, Article 9.
- (Added by Ord. 02-10)

Sec. 29-11.3 Location and installation of publication dispensing rack enclosures.*[*Editor's Note: This section may be amended pursuant to Section 8 of Ordinance 02-10.]

- (a) Each designated location must include at least one publication dispensing rack enclosure consisting of a minimum of four twelve-inch or two twenty-four-inch spaces.
- (b) The city shall install publication dispensing rack enclosures within the Waikiki special district. The director shall adjust the location of publication dispensing rack enclosures and the number of spaces in each enclosure existing on January 1, 2014 as follows:
 - (1) The director may remove a publication dispensing rack enclosure or replace an enclosure with an enclosure containing a lesser number of spaces (but not less than the minimum number of spaces per enclosure required in subsection (a)), if greater than fifty percent of the number of spaces in an enclosure remain unallocated after two successive allocation or reallocation of the spaces.
 - (2) The director may add a minimum-sized publication dispensing rack enclosure or increase the number of spaces in an existing enclosure, if the director determines, upon petition and submission of evidence by an applicant, that additional spaces are warranted because there is sufficient demand to occupy at least fifty percent of the additional spaces requested. The director shall determine the evidence required to be submitted by an applicant, and the decision of the director is final.
- (c) (1) The design, dimensions, placement, materials and orientation of each publication dispensing rack enclosure shall be determined by the director or the appropriate city agency and shall be based on compliance with the

Americans with Disabilities Act (ADA), Chapter 21 (the Land Use Ordinance), and Chapter 15 (the Traffic Code). Standards prescribed by the director or appropriate city agency may differ for the various publication dispensing rack enclosures.

- (2) Sound traffic engineering principles and pedestrian safety factors should be considered in determining the exact dimensions and placement of each enclosure. The director or appropriate city agency should also adhere to the department of transportation services' guidelines for the placement of obstructions in sidewalk areas, and any revisions thereto, to the extent practicable.

(Added by Ord. 02-10, Am. Ord. 14-7)

Sec. 29-11.4 Publication dispensing rack enclosures.*[*Editor's Note: This section may be amended pursuant to Section 9 of Ordinance 02-10.]

- (a) A publication dispensing rack enclosure in the Waikiki special district shall contain a minimum of two publication dispensing rack spaces.
- (b) Each publication dispensing rack enclosure shall be designed so that publication dispensing rack inserts inserted therein may meet the standards for such inserts established by the director.
- (c) The director shall assign a designation to each space within each publication dispensing rack enclosure for the purpose of identification. The designation may, but need not be displayed on the enclosure. The director may redesignate the spaces when the director deems such redesignation appropriate.
- (d) Nothing in this article shall be construed to preclude the city from installing additional publication dispensing rack enclosures.
- (e) The director shall designate each publication rack enclosure as a 12-inch publication dispensing rack enclosure or as a 24-inch dispensing rack enclosure. The designation shall take effect for the first allocation following the designation. No 12-inch publication dispensing rack insert may be placed in a 24-inch dispensing rack enclosure and no 24-inch dispensing rack insert may be placed in a 12-inch publication dispensing rack enclosure.

(Added by Ord. 02-10)

Sec. 29-11.5 Publication dispensing rack inserts.

- (a) The director shall establish, by rules adopted pursuant to Section 29-11.15, standards for the size, design, color and material of publication dispensing rack inserts that may be inserted into the city's publication dispensing rack enclosures pursuant to permit. Different standards may be established for 12-inch publication dispensing rack inserts and 24-inch publication dispensing rack inserts.
- (b) No person may place anything other than:
 - (1) A publication dispensing rack insert for which a permit has been issued and meeting the standards established pursuant to subsection (a); and
 - (2) Copies of the publication permitted to be dispensed from the publication dispensing rack insert, into a space in a publication dispensing rack enclosure.

(Added by Ord. 02-10)

Sec. 29-11.6 Publication dispensing rack space permits.*[*Editor's Note: This section may be amended pursuant to Sections 10 and 11 of Ordinance 02-10.]

- (a) Any publisher desiring the use of a publication dispensing rack space in a publication dispensing rack enclosure for purposes of dispensing a publication therefrom shall submit an application for a publication dispensing rack space permit to the director. For any one allocation or reallocation, a publisher may submit applications for more than one publication, but shall submit no more than one application per publication. For any one allocation, no more than one application may be submitted for any publication. Only those publishers submitting completed applications shall be eligible to obtain a publication dispensing rack space permit.

The director shall determine the form of, and provide to interested persons copies of, the publication dispensing rack space permit application form.

The director shall, prior to the earliest date established under subsection (f) on which applications may be submitted for any allocation or reallocation, send a copy of the form to each person who is a permittee as of that date, addressed to the permittee at the last address on file with the director. The failure of the director to notify a permittee, however, will not excuse the permittee from filing a timely application.
- (b) The application for a publication dispensing rack space permit shall be submitted by the publisher and shall include the following:
 - (1) The name, mailing address, telephone number and/or cellular telephone number, and, if any, the facsimile number and/or e-mail address of both the owner of the publication and the applicant and the names under which the owner and applicant conduct business, if any.
 - (2) The name, mailing address, telephone number and/or cellular telephone number, and, if any, the facsimile number and/or e-mail address of the individual person or persons who will have supervision of and responsibility for the use and maintenance of the publication dispensing rack space and of any permitted publication dispensing rack insert placed therein.
 - (3) The relationship between the owner of the publication and the applicant and a statement of the applicant's authority to make the application on behalf of the owner of the publication.
 - (4) The name of the publication for which the space is desired, a statement verifying that the publication exists as of the date of the application, and a copy of the publication for which the permit is desired.
 - (5) A nonrefundable application fee of \$50.
 - (6) Proof of liability insurance, for the term of the permit, with minimum policy limits of \$500,000 for personal injury or death and \$100,000 for property damage, or with such higher limits, not to exceed \$1,000,000 for personal injury or death and \$200,000 for property damage, as is determined appropriate by the director based on the risk experience under this article, naming the city as an additional named insured in the event of personal

injury or death or property damage caused by any negligence of the permittee in the maintenance of any publication dispensing rack space or any permitted publication dispensing rack insert. For purposes of this subdivision "negligence" also includes reckless, knowing or intentional conduct.

- (7) Such other information as is requested on the form.
- (8) A statement as to whether the applicant desires spaces for the publication in 12-inch publication dispensing rack enclosures or in 24-inch publication dispensing rack enclosures, but not both.
- (c) (1) All spaces in all publication dispensing rack enclosures shall be allocated by the director in May of 2002 for the three-year period commencing July 1, 2002 and ending June 30, 2005 and shall be allocated again in May every three years thereafter for the three-year period beginning on July 1 of the year of the allocation and ending on June 30 of the third year thereafter.
- (2) In November of each year in which a triennial allocation is made under subdivision (1), and in May and November of all other years, the director shall reallocate all publication dispensing rack spaces that are unallocated or have been abandoned or surrendered. The reallocation of spaces made in November shall be effective from January 1 of the year immediately following the reallocation until June 30 of the year in which the next triennial allocation is made pursuant to subdivision (1). The reallocation of spaces made in May under this subdivision shall be effective from July 1 of the year of the reallocation until June 30 of the year in which the next triennial allocation is made pursuant to subdivision (1). If, as of the latest date set in subsection (f) for the submission of applications for a reallocation, there are fewer than 25 unallocated, abandoned or surrendered spaces available for reallocation, the director may cancel the scheduled reallocation, provided that the director may not cancel two consecutive scheduled reallocations. If cancelling a scheduled reallocation, the director shall give notice of the cancellation to all applicants that have filed applications to participate in the reallocation.
- (3) The allocation or reallocation shall be recorded on permits issued by the director to the applicants for all publications for which spaces are allocated or reallocated.
- (4) The procedures for the allocation or reallocation of spaces shall be in accordance with Section 29-11.7.
- (d) For each publication to which any publication dispensing rack spaces are allocated or reallocated, there shall be one permit issued, for each allocation or reallocation, listing the date of the allocation or reallocation, the name of the permittee, the name of the publication, the designation assigned by the director under Section 29-11.4(c) to each space allocated or reallocated for the publication, the total number of spaces assigned to that publication under the allocation or reallocation, and the term of the permit.
- (e) No applicant may be allocated or reallocated, or be issued a permit for, more than one publication dispensing rack space at any one location for any one publication.
- (f) Applications to participate in a triennial allocation pursuant to subsection (c)(1) or in a May reallocation under subsection (c)(2) shall be submitted to the director no earlier than March 1, and no later than May 1, of the year in which the allocation or reallocation is scheduled to take place. Applications to participate in a November reallocation under subsection (c)(2) shall be submitted to the director no earlier than September 1, and no later than November 1, of the year in which the reallocation is scheduled to take place.
- (g) The publication dispensing rack space permit shall not be transferable. No permit may be used to dispense a publication other than the publication named in the permit. The director may adopt rules for determining whether a publication is the same publication as that for which the permit was issued and for determining when a permit is deemed to have been transferred.
- (h) The director, by rule, shall establish the fee based on the city's cost to clean, maintain and repair the publication dispensing rack enclosures. Until such time as the director establishes a new fee, the permit fee is \$444 per triennium for each publication dispensing rack space allocated for a publication. The fee is payable in equal annual amounts due no later than 30 days before the start of each new 12 month period beginning on July 1, or as otherwise adjusted by the director. Failure to submit payment by the due date will result in termination of the space permit, and the applicable space will be reallocated pursuant to subsection (c)(2).
 - (1) No refund of fees will be made if the publication abandons or surrenders a space.
 - (2) Permit fees for spaces reallocated under subsection (c)(2) will be prorated for the remainder of the three-year permit period.
- (i) The requirement that a copy of the publication be submitted with the application is intended to ensure that the publication exists at the time of the application and the director may not deny a permit for any publication based upon its content. No permit shall be issued for a publication that does not exist at the time of the application.
- (j) The director shall maintain a record of all publication dispensing rack spaces that have been allocated or reallocated, the permittees to which the spaces have been allocated or reallocated, and the publication permitted to be dispensed from the spaces.
- (k) No space in a 24-inch publication dispensing rack enclosure may be allocated or reallocated for a publication if any application submitted for that publication for the permit period stated that the applicant was applying for spaces in 12-inch publication dispensing rack enclosures. No space in a 12-inch publication dispensing rack enclosure may be allocated or reallocated for a publication if any application for that publication for the permit period stated that the applicant was applying for spaces in 24-inch publication dispensing rack enclosures. No space in a 24-inch publication dispensing rack enclosure may be reallocated for a publication permitted to be dispensed from any 12-inch publication dispensing rack enclosure. No space in a 12-inch publication dispensing rack enclosure may be reallocated for a publication permitted to be dispensed from any 24-inch dispensing rack enclosure.

(Added by Ord. 02-10, Am. Ord. 14-7)

Sec. 29-11.7 Method of allocation and reallocation of publication dispensing rack spaces.*[Editor's Note: This section may be amended pursuant to Section 12 of Ordinance 02-10.]

- (a) The director shall, by rules adopted under HRS Chapter 91, determine and provide procedures for the allocation of publication dispensing rack spaces pursuant to Section 29-11.6(c)(1) by lottery or other method of random selection.

- (b) The director shall, by rules adopted under HRS Chapter 91, determine and provide procedures for the reallocation pursuant to Section 29-11.6(c)(2) of publication dispensing rack spaces that are unallocated, abandoned or surrendered by lottery or other method of random selection.
- (c) The methods for allocation and reallocation of publication dispensing rack spaces shall not distinguish between publications for which payment is required and publications for which no payment is required.
- (d) The method for allocation of publication dispensing rack spaces established by the director under subsection (a) shall:
 - (1) Provide each publication for which an application is submitted for spaces in 12-inch publication dispensing rack enclosures with an equal opportunity to be allocated a publication dispensing rack space in a 12-inch publication dispensing rack enclosure; and
 - (2) Provide each publication applying for spaces in 24-inch publication dispensing rack enclosures with an equal opportunity to be allocated a space in a 24-inch publication dispensing rack enclosure.
 This provision shall not apply to the spaces allocated after a publication has been allocated the maximum number of spaces for which it applied.
- (e) The rules adopted under subsections (a) and (b) may provide for the allocation or reallocation of spaces in the 12-inch publication dispensing rack enclosures to be made at a different time or on a different date than the allocation or reallocation of spaces in the 24-inch publication dispensing rack enclosures.

(Added by Ord. 02-10)

Sec. 29-11.8 Unallocated, abandoned or surrendered publication dispensing rack spaces.

- (a) Any person desiring to use a publication dispensing rack space that is unallocated, or that has become available through abandonment or surrender to dispense a publication may apply for the reallocation of such publication dispensing rack spaces under Section 29-11.6(c)(2).
- (b) The director shall adopt rules pursuant to Section 29-11.15:
 - (1) To determine when a publication dispensing rack space has been abandoned or surrendered; and
 - (2) To establish procedures relating to the abandonment or surrender of publication dispensing rack spaces.
- (c) When the director makes an initial determination that a publication dispensing rack space has been abandoned or surrendered, the affected permittee shall be notified of the director's initial determination and given an opportunity to contest the initial determination. The director shall adopt rules pursuant to Section 29-11.15 relating to notification of the director's determination, the permittee's opportunity to contest the initial determination, and the procedure and notification requirements for the making of a final determination. Upon the final determination, any permit purporting to be a permit for the space or spaces finally determined to be surrendered or abandoned shall be void as to the space or spaces so determined and the holder of the voided permit shall no longer be deemed a permittee as to the space or spaces so determined.
- (d) A permittee may surrender a publication dispensing rack space prior to expiration of the permit for the space when the permittee no longer wishes to dispense the publication through the space.
- (e) The director shall maintain a record of unallocated, abandoned and surrendered spaces. Unallocated, abandoned or surrendered spaces shall be reallocated pursuant to Section 29-11.6(c)(2).
- (f) No person, including the person to whom a publication dispensing rack space has been allocated or reallocated, may place an insert or any publication in the space if the space has been finally determined to have been abandoned or surrendered, until such time as the space has been reallocated pursuant to Section 29-11.6(c)(2), after which the permittee under the reallocation may insert its insert and publication in the space.

(Added by Ord. 02-10)

Sec. 29-11.9 Installation, maintenance, and repair of publication dispensing enclosures, spaces, and inserts.

- (a) It shall be the responsibility of the city to install, maintain and repair the publication dispensing rack enclosures, either directly, by contract with a private contractor or through a special improvement district. Any cost for the installation, maintenance and repair of the enclosure shall be borne by the city.
- (b) It shall be the responsibility of the permittee to maintain any publication dispensing rack space for which it holds a permit. Any cost to maintain the space shall be borne by the permittee.
- (c) It shall be the responsibility of the permittee to maintain in good operating order and repair any publication dispensing rack insert inserted into a space in a publication dispensing rack enclosure.
- (d) Failure of a permittee to comply with either subsection (b) or (c) constitutes grounds for the suspension or revocation of the permit.

(Added by Ord. 02-10, Am. Ord. 14-7)

Sec. 29-11.10 Temporary dislocations.

- (a) The director may direct a permittee to remove copies of the permitted publication and the permittee's publication dispensing rack insert from a publication dispensing rack enclosure temporarily during any public, private or utility construction work, conducted on the public sidewalk, the abutting roadway, an adjacent building or structure or to any utility, when the director determines that the removal is necessary in the interest of public safety or to facilitate the construction work.
- (b) The director may also direct a permittee to remove copies of the permitted publication and the permittee's publication dispensing rack insert from a publication dispensing rack enclosure during any installation or repair work on the publication dispensing rack enclosure.
- (c) The director shall adopt rules pursuant to HRS Chapter 91 to provide a partial rebate for publications temporarily dislocated under this section. The director may also adopt rules relating to the temporary relocation of publications that are dislocated under subsection (a) or (b).

(Added by Ord. 02-10, Am. 14-7)

Sec. 29-11.11 Prohibitions.

- (a) The following prohibitions shall apply to a publication dispensing device:
 - (1) There shall be no publication dispensing device allowed and no person may install or direct another person to install any publication dispensing device on any sidewalk within the Waikiki special district.
 - (2) Any publication dispensing device installed in violation of this article shall be subject to removal by, and forfeiture to, the director if not removed within five days of demand for removal thereof by the director.
 - (3) The director or a person or agency designated by the director shall be responsible for the removal and forfeiture of the publication dispensing device.
- (b) The following prohibitions shall apply to publication dispensing rack spaces, publication dispensing rack inserts and publication dispensing rack enclosures:
 - (1) No person may move, remove, destroy, deface or detach any publication dispensing rack enclosure unless directed to do so by the director.
 - (2) No advertising, signage or lettering of any kind shall appear on the exterior of, or be otherwise visible from the exterior of, any publication dispensing rack insert, any publication dispensing rack enclosure, or any space within a publication dispensing rack enclosure. For the purposes of this section, the display of a copy of the publication being dispensed, the designation assigned to a space by the director, and/or instructions on the dispensing of the publication from the publication dispensing rack insert shall not be deemed advertising, signage or lettering, provided that the dispensing instructions, if any, shall not protrude beyond two rectangles with dimensions of 3 1/2 inches by 4 inches.
 - (3) No publication dispensing rack insert may be inserted within a space in a publication dispensing rack enclosure, except pursuant to a current and valid permit issued under this article. Any publication dispensing rack insert so inserted without a current and valid permit shall be subject to removal by and forfeiture to the director or a person or agency designated by the director.
 - (4) No person may place any trash, rubbish or, without the approval of the director, any other material, other than a permitted publication dispensing rack insert and copies of the permitted publication, in a space in a publication dispensing rack enclosure.
 - (5) No person may move, remove, deface or detach any publication dispensing rack insert that has been inserted into a publication dispensing rack enclosure under a current and valid permit without authorization of the permittee or the city.
 - (6) No person may climb, sit, stand, or lay on top of, inside of, or under any publication dispensing rack enclosure, any space within a publication dispensing rack enclosure, or any publication dispensing rack insert without authorization of the city.
- (c) The director shall adopt rules, pursuant to Section 29-11.15, to establish procedures for giving notice of violations, and for the removal and forfeiture of publication dispensing devices in accordance with subsection (a), or of publication dispensing rack inserts in accordance with subsection (b).

(Added by Ord. 02-10, Am. Ord. 14-2)

Sec. 29-11.12 Liability.

The city shall not be held liable for the installation of any publication dispensing rack space at any of the designated locations within the Waikiki special district. (Added by Ord. 02-10)

Sec. 29-11.13 Enforcement.

The director and any person or agency designated by the director may enforce and administer the provisions of this article. Notwithstanding the foregoing, any authorized police officer has the authority to enforce Section 29-11.11(b)(6) as follows:

- (a) Powers of Arrest or Citation. Police officers and any other officer so authorized shall issue a citation for any violation of the provisions of this article or of any rule adopted by the director to administer, implement or enforce the provisions of 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 for this article for instances which do not mandate the 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 designated 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.
 - (2) In every case when a citation is issued, a copy of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving the violator a copy of the citation and provide for the disposition of the original and any other copies.
 - (3) Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

(Added by Ord. 02-10, Am. Ord. 14-2)

Sec. 29-11.14 Penalty.

Any person violating any provision of Section 29-11.11, any other provision of this article, or any rule adopted pursuant to Section 29-11.15, shall be fined not less than \$100 and not more than \$500 for each violation. In addition, a permittee violating any provision of Section 29-11.11, any other provision of this article, or any rule adopted under Section 29-11.15 may have the permit suspended or revoked, may have some or all of the spaces allocated or reallocated to the permittee deemed abandoned or surrendered, or may be precluded for a time from the allocation or reallocation of publication dispensing rack spaces under this article. (Added by Ord. 02-10)

Sec. 29-11.15 Rules.

The director shall adopt rules pursuant to HRS Chapter 91, having the force and effect of law, for the interpretation, implementation, administration and enforcement of this article. (Added by Ord. 02-10)

Sec. 29-11.16 Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the 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 are severable. (Added by Ord. 02-10)

**(Article 11A.* Dispensing Racks Along Kalakaua Avenue
Repealed by Ord. 02-10)**

[*Editor's Note: Chapter 29, Article 11, was redesignated as Chapter 29, Article 11A, by Ordinance 02-10, such designation to be effective from the date of approval of Ordinance 02-10 (March 28, 2002) to June 30, 2002. On July 1, 2002, Chapter 29, Article 11A, was repealed.]

Article 12. Charitable Sales Activities on Public Places*

[*Editor's Note: In accordance with Sec. 29-12.16, this article has ceased to be effective as a result of the court decision upholding the city's peddling ordinance (Ch. 29, Art. 6).]

Sections:

- 29-12.1 Definitions.**
- 29-12.2 Application.**
- 29-12.3 Locations and hours of operation for charitable sales activity from tables pursuant to a permit.**
- 29-12.4 Prohibition.**
- 29-12.5 Applications for permits.**
- 29-12.6 Information required of applicant.**
- 29-12.7 Assignment of sales location.**
- 29-12.8 Table size, staffing and signage.**
- 29-12.9 Manner of display.**
- 29-12.10 Fact sheet.**
- 29-12.11 Permit on site.**
- 29-12.12 Conformity to permit conditions.**
- 29-12.13 Authority of the director.**
- 29-12.14 Violation--Penalty.**
- 29-12.15 Severability.**
- 29-12.16 Contingent effectiveness.**

Sec. 29-12.1 Definitions.

Whenever used in this article unless a different meaning clearly appears from the context:

"Applicant" means the nonprofit organization which is in the process of applying for a charitable sales permit pursuant to this article.

"Application month" means the calendar month preceding the permit month.

"Department" means the department of finance of the City and County of Honolulu.

"Director" means the director of finance of the City and County of Honolulu.

"Message-bearing merchandise" means a product bearing a message that is inextricably intertwined with the purpose and activities of the permittee being sold under a permit issued pursuant to this article. All message-bearing merchandise must constitute or contain a conspicuous political, religious, philosophical or ideological message having intellectual content that is informative of the purpose of the permittee's organization and that is permanent, readable or recognizable from a reasonable distance.

"Nonprofit organization" means an organization that can establish that it:

- (1) Is exempt (or would be qualified for an exemption) from federal income tax pursuant to Section 501 of the United States Internal Revenue Code;
- (2) Is exempt (or qualified for an exemption) from the Hawaii state income tax as a nonprofit organization; or
- (3) Is organized and operated exclusively for religious, charitable, scientific, educational or political purposes on a nonprofit basis in which no part of the net earnings of the organization inures to the benefit of any private individuals.

"Permit month" means the calendar month in which a permit period begins.

"Permit period" means the calendar week for which a permit is valid.

"Permittee" means the nonprofit organization that has been issued a charitable sales permit pursuant to this article.

"Person" includes individuals and organizations.

"Public place" means the same as is defined in Section 29-1.1.

"Sales" means the transfer of or offer to transfer merchandise for money, or requests for donations in exchange for merchandise.

"Waikiki special district" means Waikiki special district as defined in Section 21-9.80-2.

(Added by Ord. 94-86)

Sec. 29-12.2 Application.

The provisions of this article shall apply to sales of message-bearing merchandise in the Waikiki special district. (Added by Ord. 94-86)

Sec. 29-12.3 Locations and hours of operation for charitable sales activity from tables pursuant to a permit.

Notwithstanding Sections 29-6.1 and 29-6.2, within the Waikiki special district, nonprofit organizations that obtain a permit from the director in accordance with this article shall be permitted to engage in the sale of message-bearing merchandise. Such activity shall be conducted during daylight hours, but no earlier than 8:00 a.m. or later than 6:00 p.m., from tables at the following locations:

- (1) The makai side of Ala Wai Boulevard between Lipeepee Street and Kalakaua Avenue;
- (2) The Ewa side of Keoniana Street between Kalakaua Avenue and Ala Wai Boulevard;
- (3) The Ewa side of Kuamoo Street between Kalakaua Avenue and Ala Wai Boulevard;
- (4) The Ewa side of Namahana Street between Kuhio Avenue and Ala Wai Boulevard;
- (5) The Ewa side of Kalaimoku Street between Kalakaua and Kuhio Avenues;
- (6) The Diamond Head side of Saratoga Road between Kalakaua Avenue and Kalia Road;
- (7) The Ewa side of Lewers Street between Kalakaua Avenue and Lauula Street;
- (8) The Diamond Head side of Lewers Street between Kalakaua Avenue and Lauula Street;
- (9) The Ewa side of Lewers Street between Kuhio Avenue and Ala Wai Boulevard;
- (10) The Ewa side of Royal Hawaiian Avenue between Lauula Street and Waikolu Way;
- (11) The Diamond Head side of Seaside Avenue between Kalakaua and Kuhio Avenues;
- (12) The Ewa side of Walina Street between Kuhio Avenue and Ala Wai Boulevard;
- (13) The Diamond Head side of Walina Street between Kuhio Avenue and Ala Wai Boulevard;
- (14) The Ewa side of Kaiulani Avenue between Kalakaua and Kuhio Avenues; and
- (15) The Diamond Head side of Ohua Avenue between Kalakaua and Kuhio Avenues.

These locations are shown on the map designated as Exhibit A, found at the end of this article. There shall be no more than two tables at each location identified in this section. The director, with the assistance of the city department of transportation services, shall designate with appropriate markings at the locations the permitted place for each table at each location. No permittee shall maintain more than one table at each location. A separate permit shall be required for each location.

If any duly authorized construction work occurs at or near any of the above locations, and the permitted sales activities would interfere with the construction work or would create a public safety hazard, the director is authorized to temporarily suspend use of the affected locations until such time as the construction work is completed. Upon completion of the construction work, the director shall again issue permits to qualified nonprofit organizations for sales activities under this article at the affected locations. (Added by Ord. 94-86)

Sec. 29-12.4 Prohibition.

- (a) Except as otherwise permitted by this article and any other provision in the Revised Ordinances of Honolulu 1990, no person shall engage in any sales activities upon the streets, alleys, sidewalks, parks, beaches or other public places in the Waikiki special district.
- (b) No person shall use any city-owned or maintained street furniture or structure, including any bench, planter, utility cabinet, or other street furniture or structure permanently installed on public property for the display of anything whatsoever in connection with the sale of merchandise, nor otherwise put such bench, planter, utility cabinet, street furniture or structure to use in furtherance of such sale.

(Added by Ord. 94-86)

Sec. 29-12.5 Applications for permits.

- (a) Applications for permits shall be obtained free of charge from the director. Only those applications on department forms or as otherwise prescribed by the department will be considered.
- (b) Only nonprofit organizations shall be eligible for a permit under this article, but any nonprofit organization submitting a timely application containing the information required by Section 29-12.6 shall be eligible for a permit or permits in accordance with the provisions of Section 29-12.7.
- (c) An application for permit for any permit month shall be received by the department during regular business hours between the first and the tenth day of the application month.
- (d) Each nonprofit organization shall submit no more than one application per application month listing the location or locations and permit period or periods for which a permit or permits are desired in the permit month. Each application is eligible for one or more permits in the permit month subject to Section 29-12.7.
- (e) All permits shall be valid for a period of one calendar week and shall be irrevocable and nontransferable.

(Added by Ord. 94-86)

Sec. 29-12.6 Information required of applicant.

- (a) The permit application shall require the following information:
 - (1) The name and address of the nonprofit organization;
 - (2) The names of individuals in charge of organizing the charitable sales activity, and their addresses and telephone numbers where they may be reached during business hours;
 - (3) The names of individuals who are to be involved in sales and their affiliation with the nonprofit organization;
 - (4) A description of merchandise involved in the applicant's sales, but this shall not be construed to include the message or the content of the message thereon;
 - (5) The mission and purpose of the applicant and the purpose of the sales activity;
 - (6) Proof of the applicant's nonprofit status. Such proof shall include proof of Internal Revenue tax exempt status as nonprofit organization, file-stamped copy of nonprofit organization registration pursuant to HRS Chapter 415B, or file-stamped copy of charitable organization registration pursuant to HRS Chapter 467B; and
 - (7) The location at and permit period for which the applicant desires to engage in the sales activity.

(Added by Ord. 94-86)

Sec. 29-12.7 Assignment of sales location.

- (a) Upon receipt of the information required in Section 29-12.6, the director shall award the applicant a permit on a nondiscretionary basis, unless the number of applicants exceeds the number of spaces available at the location. If the latter occurs, then the spaces shall be allocated in accordance with subsection (b).
- (b) If the number of applicants for any permit period at any location exceeds the number of spaces available, a lottery shall be held on the 20th day of the application month or, if the 20th day falls on a weekend or holiday, on the first business day thereafter, for all permits to be effective in the succeeding month (permit month). The lottery shall be conducted as a rotating drawing or on some other basis which ensures that all applicants participating therein have an equal opportunity to obtain a permit to be effective during the permit month.

(Added by Ord. 94-86)

Sec. 29-12.8 Table size, staffing and signage.

- (a) The tables used by permittees shall not exceed nine square feet in area, nor shall any side of the table exceed three feet in length.
- (b) Each permittee shall be limited to one sign of no more than one foot by two feet per table. The permittee's name shall be displayed in a readable manner on said sign.
- (c) Each permittee shall have no more than one person at each table engaged in sales activities at all times during the permitted hours of operation under the permit.

(Added by Ord. 94-86)

Sec. 29-12.9 Manner of display.

Each permittee shall neatly display all items of merchandise on the table. Merchandise may be stacked on the tables, provided that each stack of merchandise shall not exceed the height of 12 inches. No items of merchandise shall be displayed in any other area, including but not limited to any vehicle parked on the roadway. Any boxes and accessory items at the location shall be stored wholly underneath the table. (Added by Ord. 94-86)

Sec. 29-12.10 Fact sheet.

- (a) A laminated fact sheet, at least 8 1/2 x 11 inches in size, shall be displayed at the table stating at a minimum:
 - (1) The name, address and purpose of the organization;
 - (2) That the organization is not in any way associated with the City and County of Honolulu; and
 - (3) That merchandise is being sold as part of the permittee's activities.
- (b) Each permittee shall provide a receipt with each sales transaction. The receipt shall contain:
 - (1) The name and address of the organization conducting the sales activity; and
 - (2) The date of sale, the number and types of items sold under the receipt and the dollar amount received for the transaction.

(Added by Ord. 94-86)

Sec. 29-12.11 Permit on site.

- (a) The original of the permit issued by the city must be displayed at the permit area at all times.
- (b) Each member of a permittee's organization engaged in sales activity shall at all times wear and keep visible a legible identification badge with the name of the individual and the name and address of the organization while conducting such activity at the site.

(Added by Ord. 94-86)

Sec. 29-12.12 Conformity to permit conditions.

- Permittees shall agree that they shall meet the following conditions:
- (a) Retain one individual listed pursuant to Section 29-12.6(a)(3) at the permit site at all times when sales activities are conducted;
 - (b) Remove all tables and accessories from the permit areas at the end of each day's sales activities; and
 - (c) Remove all litter generated in or around the permit area as a result of the sales activities daily.

(Added by Ord. 94-86)

Sec. 29-12.13 Authority of the director.

The director shall have the authority and responsibility to regulate sales activity at the locations designated in Section 29-12.3, provided that such regulation shall not be inconsistent with the provisions of this article and any other provisions in the Revised Ordinances of Honolulu 1990. (Added by Ord. 94-86)

Sec. 29-12.14 Violation -Penalty.

Any person violating any provision of this article shall, upon conviction, be guilty of a petty misdemeanor and subject to punishment in accordance with HRS Sections 706-640 and 706-663. (Added by Ord. 94-86)

Sec. 29-12.15 Severability.

If any provision of this article, or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the 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. 94-86)

Sec. 29-12.16 Contingent effectiveness.

No provision of the city peddling ordinance, Sections 29-6.1 through 29-6.4, shall be deemed repealed by implication or otherwise superseded as a result of this article, and the provisions of this article shall cease to be effective if the peddling ordinance is held by a judgment of a court of competent jurisdiction to be constitutional and enforceable with regard to expressive sales activities on public places in Waikiki; provided, however, that this article shall once again become effective if any appellate or reviewing court subsequently shall determine that the peddling ordinance is unconstitutional or unenforceable, but in such event this article shall be subject to further cessation of effectiveness as provided aforesaid unless no further appeal is possible. (Added by Ord. 94-86)

>>>>>“EXHIBIT A,” MAP OF VENDOR STALLS FOR CHARITABLE SALES<<<<<<

**Article 13. Use of Animals in Solicitations in the Waikiki
Special District**

Sections:

- 29-13.1 Definitions.**
- 29-13.2 Prohibition.**
- 29-13.2A Exception.**
- 29-13.3 Violation--Penalty.**
- 29-13.4 Other laws not affected.**

Sec. 29-13.1 Definitions.

For the purposes of this article:

“Public property” includes any street, highway, boulevard, road, sidewalk, alley, island, lane, bridge, parking lot, park, square, space, grounds, mall, building, or other property owned by or under the jurisdiction of any governmental entity or otherwise open to the public.

“Solicitation” means to request or demand money or gifts.

“Waikiki special district” means the Waikiki special district as defined in Section 21-9.80-2. (Added by Ord. 97-66; Am. Ord. 99-52)

Sec. 29-13.2 Prohibition.

In the Waikiki special district, no person shall use any live animal in furtherance of any solicitation on any public property, except in compliance with all of the following conditions of this section or, if applicable, Section 29-13.2A:

- (a) The animal shall be held or carried by the person conducting the solicitation at all times. No animal too large to be held or carried shall be used in any solicitation. This subsection shall not apply to a service animal as defined in 49 CFR Section 37.3 when such service animal is being used by an individual with a disability requiring such service animal.
- (b) The person conducting the solicitation shall not place the animal on or otherwise transfer the animal to any other person.
- (c) The person shall not place any cage, table, stand, or other object on public property.
- (d) The person shall not use any city-owned or maintained street furniture or structure, including any bench, planter, utility cabinet, or other street furniture or structure permanently installed on public property, for the display of anything whatsoever in connection with the solicitation, or otherwise put such bench, planter, utility cabinet, street furniture or structure to use in furtherance of such solicitation.
- (e) The person conducting the solicitation shall wear at all times on that person's chest so that it is clearly visible to persons being solicited a sign of at least 8 1/2 x 11 inches in size, upon which the following words are legibly printed in letters or characters at least 2 inch in height in both English and Japanese:
 - (1) Solicitor: (Name and address of the person or organization conducting the solicitation).
 - (2) Purpose: (The reason the solicitation is being made.)
 - (3) **YOU NEED NOT PAY OR CONTRIBUTE ANY MONEY TO THIS PERSON, ANY PAYMENT OR CONTRIBUTION IS COMPLETELY VOLUNTARY.**
 - (4) The Japanese translation for the disclaimer set forth in (3).

The statements required in (3) and (4) shall be in capital letters and bold type.

(Added by Ord. 97-66; Am. Ord. 99-52)

Sec. 29-13.2A Exception.

- (a) Section 29-13.2(a) through (e) shall not apply to a person using a live animal to solicit on privately owned public property in the Waikiki special district when the person has the express written authorization of the property owner to conduct such solicitation on the property. For the purpose of this section, “privately owned public property” means public property under the possession of a private person through fee title, lease, easement grant, or other conveyance instrument and “property owner” means the private person in possession of the property or the person's agent. A person with such authorization from the property owner shall conduct the solicitation in compliance with subsection (b).
- (b) When conducting the solicitation:
 - (1) Neither the person conducting the solicitation or any cage, table, stand, or other object owned or used by the person shall be on government-owned public property; and
 - (2) The person, upon the request of a police officer, shall immediately display to the officer the written authorization from the property owner.
- (c) A person using a live animal to solicit on privately owned public property in the Waikiki special district, but without the express written authorization of subsection (a), shall be subject to Section 29-13.2(a) through (e).

(Added by Ord. 99-52)

Section 29-13.3 Violation--Penalty.

Any person who is required to comply with Section 29-13.2(a) through (e), but who violates any of those subsections shall, upon conviction, be guilty of a petty misdemeanor and subject to punishment in accordance with HRS Sections 706-640 and 706-663. Any person who is required to comply with Section 29-13.2A(b), but who violates any of its provisions shall, upon conviction, be guilty of a petty misdemeanor and subject to punishment in accordance with HRS Sections 706-640 and 706-663. (Added by Ord. 97-66; Am. Ord. 99-52)

Section 29-13.4 Other laws not affected.

Nothing in this article shall be deemed to limit or affect the application of any other law, including but not limited to any trespass law, animal cruelty law, or Article 6 of this chapter, regulating peddling in public places. (Added by Ord. 97-66; Am. Ord. 99-52)

Article 14. Unlawful Signs Within Street Rights-of-way and Public Malls

Sections:

- 29-14.1 Definitions.**
- 29-14.2 Council finding and declaration of nuisance.**
- 29-14.3 Summary removal of unlawful signs.**
- 29-14.4 Rules.**
- 29-14.5 Application.**
- 29-14.6 Severability.**

Sec. 29-14.1 Definitions.

As used in this article:

“Portable sign” means a portable sign as defined under Section 21-7.20.

“Sign” means a sign as defined under Section 21-7.20.

“Sign area” means sign area as defined under Section 21-7.20.

“Unlawful sign” means any sign erected, established, constructed, maintained, kept or operated in violation of the provisions of this article.

(Added by Ord. 98-42)

Sec. 29-14.2 Council finding and declaration of nuisance.

The council finds and declares unlawful signs to be public nuisances, hazardous to the health, safety and welfare of the residents of the city and, therefore, such signs shall be subject to summary removal pursuant to this article. (Added by Ord. 98-42)

Sec. 29-14.3 Summary removal of unlawful signs.

(a) No person shall erect, establish, construct, maintain, keep or operate a sign, including but not limited to a portable sign, on, above or below:

- (1) Any street right-of-way, including any sidewalk area or medial strip; or
- (2) Any public mall;

except as may be permitted under Sections 21-7.10 to 21 7.80-1, or other applicable law.

Any sign in violation of this subsection shall be considered an unlawful sign, and shall be subject to summary removal under this section.

(b) The building superintendent may immediately and summarily remove or cause the immediate and summary removal of an unlawful sign. The building superintendent may request and shall receive the full cooperation and assistance of the chief of police, and of the directors of the departments of public works and transportation services, as may be appropriate, to carry out such removal.

(1) The building superintendent shall store or cause to be stored any sign removed pursuant to this section until the building superintendent is authorized to destroy, sell or otherwise dispose of the sign pursuant to the applicable provisions of this section, but in no event less than 30 calendar days from the date of removal.

(2) Notification.

- (A) If a sign removed pursuant to this section has a sign area greater than 324 square inches, and the name or address of the owner of the sign appears on the face or reverse side of the sign, then the building superintendent shall issue a written notice to the owner of the sign prior to, or within 10 working days following the date of the sign's removal; provided that no notice shall be required if only the name appears and the building superintendent is unable after a good faith effort to determine the address of the named person.
- (B) The written notice shall explain the violation and removal of the sign, where the sign is being stored, that the owner may reclaim the sign within 30 calendar days from the date of issuance of the written notice, the place and time that the sign may be reclaimed by the owner, that the owner has the right to appeal the removal of the sign in accordance with subsection (c), and that, if not timely reclaimed or the subject of a timely appeal, the sign shall be subject to disposal.
- (C) If a sign has a sign area of 324 square inches or less, or no name or address of the owner appears on the face or reverse side of the sign, then the sign shall be deemed to have no value and to be abandoned, and the notification requirements of this subdivision shall not apply.

- (3) The building superintendent may destroy, sell or otherwise dispose of a sign removed under the provisions of this section after the following time periods:
 - (A) For signs for which no notification is required by this subsection, after a period of 30 calendar days from the date of removal of the sign;
 - (B) For signs for which notification is required by this subsection, after a period of 30 calendar days from the date of issuance of the written notice under subdivision (2), unless a timely appeal has been duly filed under subsection (e).
- (c) A sign removed pursuant to this section may be reclaimed by the owner within the applicable 30-day period specified in subsection (b)(3). To reclaim a sign, an owner or the owner's authorized representative shall make arrangements with the building superintendent for the time and place to reclaim the sign, shall appear in person within the applicable 30-day period at the time and place designated by the building superintendent, shall provide adequate proof of identity and ownership and shall pay to the city a \$200.00 fee, per sign, for the city's costs of removal, storage and handling of the sign, whereupon the building superintendent shall release the sign to the owner, as is.
- (d) The city shall not be responsible for any losses, liabilities, damages, costs, claims, demands, suits, actions, payments, or judgments arising from the removal, storage or handling of a sign properly removed under the provisions of this article.
- (e) An owner of a sign removed pursuant to this section may appeal the removal to the building board of appeals as provided by Section 16-1.1. The appeal shall be limited to a determination of whether the sign was properly removed pursuant to this section. The building superintendent shall continue to store or have stored the sign until the appeal has been decided. If the decision of the board of appeals is in favor of the owner, then the sign shall be returned to the owner and no fee for the removal, storage and handling of the sign shall be charged. If the decision of the board of appeals is in favor of the building superintendent, then the sign may be returned to the owner upon payment of the removal, storage and handling fee of \$200.00 or, if the owner fails to pay the fee within seven days of issuance of notice of the decision, the sign may be destroyed, sold or otherwise disposed of by the building superintendent.

(Added by Ord. 98-42)

Sec. 29-14.4 Rules.

The building superintendent may adopt rules pursuant to HRS Chapter 91 for the implementation of this article. (Added by Ord. 98-42)

Sec. 29-14.5 Application.

- (a) This article applies only to unlawful signs erected on, above or below street rights-of-way and public malls. Unlawful signs erected in other locations shall not be subject to summary removal as provided herein, but shall be subject to any other applicable provision of state or city law, ordinance, or rule, including but not limited to the abatement and removal procedure set forth in Section 21-7.70.
- (b) The provisions of this article shall be in addition to and shall not limit any other applicable provision of state or city law, ordinance, or rule.

(Added by Ord. 98-42)

Sec. 29-14.6 Severability.

The provisions of this article are declared to be severable. If any portion of this article is held invalid for any reason, the validity of any other portion of this article which may be given effect without the invalid portion shall not be affected and if the application of any portion of this article to any person, property or circumstance is held invalid, the application of this article to any other person, property or circumstance shall not be affected. (Added by Ord. 98-42)

**(Article 15. Publication Dispensing Racks in the Waikiki Special District.
Repealed by Ord. 02-10)**

Article 15. Sitting or Lying on Public Sidewalks in the Waikiki Special District

Sections:

- 29-15.1 Prohibition--Exceptions--Citations.**
- 29-15.2 Penalty.**

Sec. 29-15.1 Prohibition--Exceptions--Citations

- (a) No person shall sit or lie on a public sidewalk, or on a tarp, towel, sheet, blanket, sleeping bag, bedding, planter, chair, bench, or any other object or material placed upon a public sidewalk in the Waikiki special district.
- (b) The prohibitions in subsection (a) shall not apply to:
 - (1) Any person sitting or lying on a sidewalk due to a medical emergency;
 - (2) Any person who, as a result of a disability, is utilizing a wheelchair or other similar device to move about the public sidewalk;
 - (3) Any person sitting or lying on a sidewalk for the purpose of engaging in an expressive activity;
 - (4) Any person sitting on a sidewalk while attending or viewing any parade, festival, performance, rally, demonstration or similar event conducted on the street pursuant to a permit issued by the city;
 - (5) Any person engaged in a maintenance, repair or construction activity on behalf of a governmental entity or a public utility;

- (6) Any child who is sitting or lying in a baby carriage, stroller, or carrier, or similar device, to move about the public sidewalk;
 - (7) Any person sitting on a chair or bench located on the public sidewalk which is placed there by a public agency; or
 - (8) Any person sitting in line for goods or services unless the person or person's possessions impede the ability of pedestrians to travel along the length of the sidewalk or enter a doorway or other entrance alongside the sidewalk.
- (c) No person shall be cited for a violation of this section unless the person engages in conduct prohibited by this article after having been notified by a law enforcement officer that the conduct violates this section.
- (d) As used in this section:
- “Expressive activity” means speech or conduct, the principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of political, religious, philosophical, or ideological opinions, views, or ideas, and for which no fee is charged or required as a condition of participation in or attendance at such activity. Expressive activity generally would not include sports events, such as marathons; fundraising events; beauty contests; commercial events; cultural celebrations or other events the principal purpose of which is entertainment.
- “Public sidewalk” means a publicly owned or maintained “sidewalk,” as defined in Section 29-1.1, and includes a “replacement sidewalk” as defined in that section.
- “Waikiki special district” means the area described in Section 21-9.80-2.

(Added by Ord. 14-26)

Sec. 29-15.2 Penalty.

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

(Added by Ord. 14-26)

Article 15A. Sitting or Lying on Public Sidewalks Outside of the Waikiki Special District

Sections:

- 29-15A.1 Declaration of legislative intent – Purpose.**
- 29-15A.2 Prohibition—Exception—Citations.**
- 29-15A.3 Penalty.**

Section 29-15A.1 Declaration of legislative intent – Purpose.

The purpose of this ordinance is to prohibit, subject to exceptions, persons from sitting or lying on public sidewalks in areas zoned for commercial and business activities.

The council of the city and county of Honolulu finds:

- (a) Public sidewalks in areas zoned for commercial and business activities are created and maintained for the primary purposes of enabling pedestrians to safely and effectively move about from place to place, facilitating deliveries of goods and services, and providing convenient access to entertainment, goods and services.
- (b) Sitting or lying down is not the customary use of the public sidewalks. Persons who sit or lie down on public sidewalks impede and deter others from using the sidewalks; thus, they discourage residents and visitors from walking to get from place to place and accessing local shops, restaurants, and businesses, and interfere with the delivery of goods and services.
- (c) The need to maintain pedestrian and commercial traffic is greatest during the hours of operation of businesses, shops, restaurants, and other commercial enterprises when public sidewalks are congested. Persons who sit or lie down on public sidewalks during business hours threaten their own safety and the safety of pedestrians, especially the elderly, disabled, vision-impaired, and children, who are put at increased risk when they must avoid and navigate around persons unexpectedly sitting or lying upon the public sidewalk.
- (d) The prohibition against sitting or lying on public sidewalks set forth in this ordinance leaves intact the individual's right to speak, protest or engage in other lawful activity on any sidewalk consistent with the individual's free speech rights. In addition, the prohibition contains exceptions for medical emergencies, and expressive activities, among others.
- (e) There are a number of places where the restrictions of this ordinance do not apply, including private property, plazas, public parks, and other common areas open to the public, that do not unduly interfere with the safe flow of pedestrian traffic, impair commercial activity, or threaten public safety.
- (f) The council acknowledges that there are reasons why one might sit or lie on a public sidewalk. The city has offered and continues to offer services to those engaged in sitting or lying on the sidewalk who appear to be in need, or to those who request service assistance. However, in many cases, these persons refuse such services or continue the conduct despite the accessibility of these services. The city will continue to invest in services for those in need and to make efforts to maintain and improve safety on public sidewalks for everyone. A law enforcement officer may not issue a citation to a person for a violation of this ordinance without first warning the person that sitting or lying down on a public sidewalk is unlawful.
- (g) Present laws that prohibit the obstruction of sidewalks do not adequately address the safety hazards, disruption and deterrence to pedestrian traffic or impairment of commercial activity caused by persons sitting or lying on the public sidewalks in areas zoned for commercial and business activities.
- (h) Pedestrians are discouraged from using public sidewalks if persons are sitting or lying down on the unpaved public property immediately abutting the public sidewalk, and pedestrians often use this expanded sidewalk area as an extension of the sidewalk, to walk and move from place to place. Pedestrian traffic is impeded when persons sit or lie down on these expanded sidewalk areas, deterring persons from accessing and using the sidewalks, and discouraging persons from walking as a means of transportation.

(Added by Ord. 14-35; Am. Ord. 15-14)

Sec. 29-15A.2 Prohibition–Exceptions–Citations.

- (a) No person shall sit or lie on a public sidewalk, or on a tarp, towel, sheet, blanket, sleeping bag, bedding, planter, chair, bench, or any other object or material placed upon a public sidewalk located within or immediately abutting the following described zones, or upon the public sidewalks on both sides of the following described street segments, or where specified in this section, on the expanded sidewalk area, during the hours from 5:00 a.m. to 11:00 p.m.:
- (1) Chinatown. The Chinatown zone is the area of the city bounded by the following streets as illustrated in Exhibit 1:
 - 1: - Starting at the intersection of Nimitz Highway/River Street,
 - River Street to the intersection of River Street/Vineyard Boulevard,
 - Vineyard Boulevard to the intersection of Vineyard Boulevard/Nuuanu Avenue,
 - Nuuanu Avenue to Nimitz Highway, and
 - Nimitz Highway to the intersection of Nimitz Highway/River Street.
 - (2) Downtown. The Downtown zone is the area of the city bounded by the following streets as illustrated in Exhibit 2:
 - Starting at the intersection of Nimitz Highway/Nuuanu Avenue,
 - Nuuanu Avenue to the intersection of Nuuanu Avenue/South Vineyard Boulevard,
 - South Vineyard Boulevard to the intersection of South Vineyard Boulevard/Punchbowl Street,
 - Punchbowl Street to the intersection of Punchbowl Street/South Beretania Street,
 - South Beretania Street to the intersection of South Beretania Street/Richards Street,
 - Richards Street to the intersection of Richards Street/Halekauwila Street,
 - Halekauwila Street to the intersection of Halekauwila Street/Nimitz Highway/Ala Moana Boulevard, and
 - Nimitz Highway/Ala Moana Boulevard to the intersection of Nimitz Highway/Nuuanu Avenue.
 - (3) McCully-Moilili. The McCully-Moilili zone is the area of the city bounded by the following streets as illustrated in Exhibit 3:
 - Starting at the intersection of South Beretania Street/McCully Street,
 - McCully Street to the intersection of McCully Street/Algaroba Street,
 - Algaroba Street to the intersection of Algaroba Street/Makahiki Way,
 - Makahiki Way to the intersection of Makahiki Way/South King Street,
 - South King Street to the intersection of South King Street/Isenberg Street,
 - Isenberg Street to the intersection of Isenberg Street/South Beretania Street, and
 - South Beretania Street to the intersection of South Beretania Street/McCully Street.The McCully-Moilili zone also includes the sidewalks abutting the following street segments:
 - University Avenue beginning at the intersection of University Avenue/South Beretania Street/South King Street and ending at University Avenue/Varsity Place,
 - South Beretania Street beginning at the intersection of South Beretania Street/McCully Street and ending at the intersection of South Beretania Street/University Avenue,
 - South King Street beginning at the intersection of South King Street/Makahiki Way and ending at the intersection of South King Street/University Avenue,
 - McCully Street beginning at the intersection of South Beretania Street/McCully Street and ending at the intersection of McCully Street/Algaroba Street, and
 - Makahiki Way beginning at the intersection of Algaroba Street/Makahiki Way and ending at the intersection of Makahiki Way/South King Street.
 - (4) Kailua. The Kailua zone is the area of the city bounded by the following streets as illustrated in Exhibit 4:
 - Starting at the intersection of Kainehe Street/Kihapai Street,
 - Kihapai Street to the intersection of Kihapai Street/Oneawa Street,
 - Oneawa Street to the intersection of Oneawa Street/Uluniu Street,
 - Uluniu Street to the intersection of Uluniu Street/Maluniu Avenue,
 - Maluniu Avenue to the intersection of Maluniu Avenue/Kuulei Road,
 - Kuulei Road to the intersection of Kuulei Road/Oneawa Street/Kailua Road,
 - Oneawa Street/Kailua Road to the intersection of Kailua Road/Hahani Street,
 - Hahani Street to the intersection of Hahani Street/Hekili Street,
 - Hekili Street to the intersection of Hekili Street/Hamakua Drive/Kainehe Street, and
 - Hamakua Drive/Kainehe Street to the intersection of Kainehe Street/Kihapai Street.The Kailua zone also includes the sidewalks abutting the following street segments:
 - Oneawa Street beginning at the intersection of Oneawa Street/Kawainui Street and ending at the intersection of Oneawa Street/Uluniu Street, and
 - Hamakua Drive beginning at the intersection of Hamakua Drive/Hahani Street and ending at the intersection of Hamakua Drive/Aoloa Street.
 - (5) Wahiawa. The Wahiawa zone is the area of the city bounded by the following streets as illustrated in Exhibit 5:
 - Starting at the intersection of Kilani Avenue/Kukui Street,
 - Kukui Street to the intersection of Kukui Street/California Avenue,
 - California Avenue to the intersection of California Avenue/Ohai Street,
 - Ohai Street to the intersection of Ohai Street/Olive Avenue,
 - Olive Avenue to the intersection of Olive Avenue/Walker Avenue,
 - Walker Avenue to the intersection of Walker Avenue/California Avenue,
 - California Avenue to the intersection of California Avenue/Lehua Street,
 - Lehua Street to the intersection of Lehua Street/Center Street,
 - Center Street to the intersection of Center Street/North Cane Street,
 - North Cane Street to the intersection of North Cane Street/Kilani Avenue, and
 - Kilani Avenue to the intersection of Kilani Avenue/Kukui Street.

The Wahiawa zone also includes the sidewalks abutting the following street segments:

- North Cane Street at the intersection of Center Street/North Cane Street to the intersection of North Cane Street/California Avenue, and
- California Avenue at the intersection of California Avenue/North Cane Street to the entrance to Wahiawa District Park parking lot.

- (6) Ala Moana-Sheridan. The Ala Moana-Sheridan zone is composed of two zones, Zone A and Zone B. Ala Moana-Sheridan Zone A. Ala-Moana Sheridan Zone A is the area of the city bounded by the following streets as illustrated in Exhibit 6-A:

- Starting at the intersection of South Beretania Street/Piikoi Street,
- Piikoi Street to the intersection of Piikoi Street/South King Street,
- South King Street to the intersection of South King Street/Hauoli Street,
- Hauoli Street to the intersection of Hauoli Street/Algaroba Street,
- Algaroba Street to the intersection of Algaroba Street/McCully Street,
- McCully Street to the intersection of McCully Street/South Beretania Street,
- South Beretania Street to the intersection of South Beretania Street/Artesian Street,
- Artesian Street to the intersection of Artesian Street/South King Street,
- South King Street to the intersection of South King Street/Kalakaua Avenue,
- Kalakaua Avenue to the intersection of Kalakaua Avenue/South Beretania Street, and
- South Beretania Street to the intersection of South Beretania Street/Piikoi Street.

Ala Moana-Sheridan Zone B. Ala Moana-Sheridan Zone B is the area of the city bounded by the following streets as illustrated in Exhibit 6-B:

- Starting at the intersection of South King Street/Cedar Street,
- South King Street to the intersection of South King Street/Kaheka Street,
- Kaheka Street to the intersection of Kaheka Street/Liona Street,
- Liona Street to the intersection of Liona Street/Keeaumoku Street,
- Keeaumoku Street to the intersection of Keeaumoku Street/Makaloa Street,
- Makaloa Street to the intersection of Makaloa Street/Kaheka Street,
- Kaheka Street to the intersection of Kaheka Street/Kanunu Street,
- Kanunu Street to the intersection of Kanunu Street/Kalakaua Avenue,
- Kalakaua Avenue to the intersection of Kalakaua Avenue/Kapiolani Boulevard,
- Kapiolani Boulevard to the intersection of Kapiolani Boulevard/Piikoi Street,
- Piikoi Street to the intersection of Piikoi Street/Makaloa Street,
- Makaloa Street to the intersection of Makaloa Street/Sheridan Street,
- Sheridan Street to the intersection of Sheridan Street/Rycroft Street,
- Rycroft Street to the intersection of Rycroft Street/Cedar Street, and
- Cedar Street to the intersection of Cedar Street/South King Street.

The Ala Moana-Sheridan Zone B also includes the sidewalks abutting the following street segment:

- Keeaumoku Street beginning at the intersection of Keeaumoku Street/Liona Street and ending at the intersection of Keeaumoku Street/Makaloa Street.

- (7) Kaneohe. The Kaneohe zone is composed of two zones, Zone A and Zone B.

Kaneohe Zone A. Kaneohe Zone A is the area of the city bounded by the following streets as illustrated in Exhibit 7-A:

- Starting at the intersection of Kamehameha Highway/Kahuhipa Street,
- Kamehameha Highway to the intersection of Kamehameha Highway/Haiku Road,
- Haiku Road to the intersection of Haiku Road/Alaloa Street,
- Alaloa Street to the intersection of Alaloa Street/Kahuhipa Street, and
- Kahuhipa Street to the intersection of Kahuhipa Street/Kamehameha Highway.

The Kaneohe Zone A also includes the sidewalks abutting the following street segments:

- Kamehameha Highway beginning at the intersection of Kamehameha Highway/Kahuhipa Street/Lilipuna Road and ending at the intersection of Kamehameha Highway/Paleka Road/Waikalua Road, and
- Lilipuna Road beginning at the intersection of Lilipuna Road/Kahuhipa Street/Kamehameha Highway and ending at the intersection of Lilipuna Road/Cobb Adams Road.

Kaneohe Zone B. Kaneohe Zone B is the area of the city bounded by the following streets as illustrated in Exhibit 7-B:

- Starting at the intersection of Kamehameha Highway/Likelike Highway/Kaneohe Bay Drive,
- Kamehameha Highway to the intersection of Kamehameha Highway/Koa Kahiko Street,
- Koa Kahiko Street to the intersection of Koa Kahiko Street/Aumoku Street,
- Aumoku Street to the intersection of Aumoku Street/Kaneohe Bay Drive, and
- Kaneohe Bay Drive to the intersection of Kaneohe Bay Drive/Kamehameha Highway/Likelike Highway.

- (8) Waimanalo. The Waimanalo zone is the area of the city bounded by the following streets as illustrated in Exhibit 8:

- Starting at the intersection of Kalaniana'ole Highway/Mekia Street,
- Mekia Street to the intersection of Mekia Street/Lukanela Street,
- Lukanela Street to the intersection of Lukanela Street/Poalima Street,
- Poalima Street to the intersection of Poalima Street/Kalaniana'ole Highway, and
- Kalaniana'ole Highway to the intersection of Kalaniana'ole Highway/Mekia Street.

- (9) Kapahulu. The Kapahulu street segments include the following streets as illustrated in Exhibit 9:

- The eastern side of Kapahulu Avenue beginning at the intersection of Kapahulu Avenue/Leahi Avenue and ending 200 feet to the north of the intersection of Kapahulu Avenue/Herbert Street,

- Kapahulu Avenue beginning 200 feet to the north of the intersection of Kapahulu Avenue/Herbert Street and ending at the intersection of Kapahulu Avenue/Olu Street,
 - The eastern side of Kapahulu Avenue beginning at the intersection of Kapahulu Avenue/Olu Street and ending at the intersection of Kapahulu Avenue/Charles Street,
 - Kapahulu Avenue beginning at the intersection of Kapahulu Avenue/Charles Street and ending 100 feet north of the intersection of Kapahulu Avenue/Charles Street,
 - The eastern side of Kapahulu Avenue beginning 100 feet to the north of the intersection of Kapahulu Avenue/Charles Street and ending at the intersection of Kapahulu Avenue/Kaimuki Avenue,
 - Kapahulu Avenue beginning at the intersection of Kapahulu Avenue/Kaimuki Avenue and ending at the intersection of Kapahulu Avenue/Waialae Avenue,
 - Campbell Avenue beginning at the intersection of Campbell Avenue/Kapahulu Avenue and ending at the intersection of Campbell Avenue/Brokaw Street,
 - Kanaina Avenue beginning at the intersection of Kanaina Avenue/Kapahulu Avenue and ending at the intersection of Kanaina Avenue/Brokaw Street,
 - Herbert Street beginning at the intersection of Herbert Street/Kapahulu Avenue and ending at the intersection of Herbert Street/Campbell Avenue,
 - Castle Street beginning at the intersection of Castle Street/Kapahulu Avenue and ending at the intersection of Castle Street/Campbell Avenue, and
 - Brokaw Street beginning at the intersection of Brokaw Street/Kanaina Avenue and ending at the intersection of Brokaw Street/Campbell Avenue.
- (10) **Kaimuki.** The Kaimuki street segments include the following streets as illustrated in Exhibit 10:
- Kapiolani Boulevard beginning at the intersection of Kapiolani Boulevard/Kaimuki Avenue and ending at the intersection of Kapiolani Boulevard/Waialae Avenue,
 - Waialae Avenue beginning at the intersection of Waialae Avenue/Kapiolani Boulevard and ending at the intersection of Waialae Avenue/Palolo Avenue,
 - The northern side of Waialae Avenue beginning at the intersection of Waialae Avenue/Palolo Avenue and ending at the intersection of Waialae Avenue/6th Avenue,
 - Waialae Avenue, beginning at the intersection of Waialae Avenue/7th Avenue and ending at the intersection of Waialae Avenue/10th Avenue,
 - The northern side of Waialae Avenue beginning at the intersection of Waialae Avenue/10th Avenue and ending at the intersection of Waialae Avenue/11th Avenue,
 - Waialae Avenue beginning at the intersection of Waialae Avenue/11th Avenue and ending at the intersection of Waialae Avenue/Koko Head Avenue,
 - The northern side of Waialae Avenue beginning at the intersection of Waialae Avenue/Koko Head Avenue and ending 200 feet east of the intersection of Waialae Avenue/Wilhelmina Rise,
 - The eastern side of 11th Avenue beginning at the intersection of 11th Avenue/Waialae Avenue and ending at the intersection of 11th Avenue/Harding Avenue,
 - 12th Avenue beginning at the intersection of 12th Avenue/Waialae Avenue and ending at the intersection of 12th Avenue/Harding Avenue,
 - Harding Avenue from the intersection of Harding Avenue/11th Avenue to the intersection of Harding Avenue/Koko Head Avenue, and
 - The western side of Koko Head Avenue beginning at the intersection of Koko Head Avenue/Harding Avenue and ending at the intersection of Koko Head Avenue/Waialae Avenue.
- (11) **Kahala.** The Kahala street segments include the following streets as illustrated in Exhibit 11:
- The southern side of Waialae Avenue beginning at the intersection of Waialae Avenue/21st Avenue and ending at the intersection of Waialae Avenue/Hunakai Street,
 - Waialae Avenue beginning at the intersection of Waialae Avenue/Hunakai Street and ending 650 feet to the east of the intersection of Waialae Avenue/Hunakai Street,
 - The southern side of Waialae Avenue beginning 650 feet to the east of the intersection of Waialae Avenue/Hunakai Street and ending at the intersection of Waialae Avenue/Kealaolu Avenue,
 - The northern side of Waialae Avenue beginning at the intersection of Waialae Avenue/Kilauea Avenue and ending at the Waialaenui Gulch Stream Bridge crossing,
 - The eastern side of Hunakai Street beginning at the intersection of Hunakai Street/Waialae Avenue and ending at the Kahala Mall parking lot entrance via Hunakai Street, and
 - The western side of Kilauea Avenue beginning at the intersection of Kilauea Avenue/Waialae Avenue and ending at the intersection of Kilauea Avenue/Pahoa Avenue.
- (12) **Aina Haina-Niu Valley.** The Aina Haina-Niu Valley street segments include the following streets as illustrated in Exhibit 12:
- The northern side of Kalaniana'ole Highway from 400 feet west of the intersection of Kalaniana'ole Highway/West Hind Drive to 600 feet east of the intersection of Kalaniana'ole Highway/West Hind Drive, and
 - The northern side of Kalaniana'ole Highway from the intersection of Kalaniana'ole Highway/Niuiiki Circle to the intersection of Kalaniana'ole Highway/Halemaumau Street.
- (13) **Hawaii Kai.** The Hawaii Kai street segments include the following streets as illustrated in attached Exhibit 13:
- The northern side of Kalaniana'ole Highway from the intersection of Kalaniana'ole Highway/Keahole Street to the Hawaii Kai Marina Bridge,
 - The southeastern side of Keahole Street from the intersection of Keahole Street/Kalaniana'ole Highway to the northernmost entrance to the Hawaii Kai Towne Center parking lot via Keahole Street,

- The northern side of Kalanianaʻole Highway from the intersection of Kalanianaʻole Highway/Lunalilo Home Road to the westernmost entrance to the Koko Marina Center parking lot via Kalanianaʻole Highway,
 - The western side of Lunalilo Home Road from the intersection of Lunalilo Home Road/Kalanianaʻole Highway to 200 feet north of the intersection of Lunalilo Home Road/Kaunakani Street, and
 - The northern side of Hawaii Kai Drive from the intersection of Hawaii Kai Drive/Pepeekeo Street to the Hahaione Valley Stream Bridge.
- (14) Aala. The Aala zone is the area of the city bounded by the following streets as illustrated in attached Exhibit 14:
- Starting at the intersection of Aala Street and North Beretania Street,
 - Aala Street to the intersection of Aala Street/North Vineyard Boulevard,
 - North Vineyard Boulevard to the intersection of North Vineyard Boulevard/River Street,
 - River Street to the intersection of River Street/North Beretania Street, and
 - North Beretania Street to the intersection of North Beretania Street/Aala Street.
- The Aala zone also includes the sidewalks abutting the following street segments:
- North Beretania Street beginning at the intersection of North Beretania Street/North King Street and ending at the intersection of North Beretania Street/River Street,
 - River Street beginning at the intersection of River Street/North Beretania Street and ending at the intersection of River Street/North King Street,
 - North King Street beginning at the intersection of North King Street/River Street and ending at the intersection of North King Street/North Beretania Street,
 - North Hotel Street beginning at the intersection of North Hotel Street/North King Street and ending at the intersection of North Hotel Street/River Street, and
 - The entire length of Aala Place.
- (15) Kapalama. The Kapalama street segments include the following streets as illustrated in attached Exhibit 15, and the expanded sidewalk areas along those streets:
- Kohou Street beginning at the intersection of Kohou Street/Olomea Street and ending at the intersection of Kohou Street/Kalani Street, and
 - Kokea Street beginning at the intersection of Kokea Street/Olomea Street and ending at the southern terminus of Kokea Street.
- (b) The prohibitions in subsection (a) shall not apply to:
- (1) Any person sitting or lying on a sidewalk due to a medical emergency;
 - (2) Any person who, as a result of a disability, is utilizing a wheelchair or other similar wheeled chair device to move about the public sidewalk;
 - (3) Any person sitting or lying on a sidewalk for the purpose of engaging in an expressive activity;
 - (4) Any person sitting on a sidewalk while attending or viewing any parade, festival, performance, rally, demonstration or similar event conducted on the street pursuant to a permit issued by the city;
 - (5) Any person engaged in a maintenance, repair or construction activity on behalf of a governmental entity or a public utility;
 - (6) Any child who is sitting or lying in a baby carriage, stroller, or carrier, or similar device, to move about the public sidewalk;
 - (7) Any person sitting on a chair or bench located on the public sidewalk which is placed there by a public agency;
 - (8) Any person sitting in line for goods or services unless the person or person's possessions impede the ability of pedestrians to travel along the length of the sidewalk or enter a doorway or other entrance alongside the sidewalk; or
 - (9) Sitting or lying on a public sidewalk in a designated geographic area regulated by separate ordinance enactment.
- (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.
- (d) As used in this section:
- "Expanded sidewalk area" means the unpaved public property immediately abutting a public sidewalk that extends 10 feet away from the sidewalk from the edge of the sidewalk farthest from the roadway.
- "Expressive activity" means speech or conduct, the principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of political, religious, philosophical, or ideological opinions, views, or ideas, and for which no fee is charged or required as a condition of participation in or attendance at such activity. Expressive activity generally would not include sports events, such as marathons; fundraising events; beauty contests; commercial events; cultural celebrations or other events the principal purpose of which is entertainment.
- "Public sidewalk" means a publicly owned or maintained "sidewalk," as defined in Section 29-1.1, and includes a "replacement sidewalk" as defined in that section. Where the property line adjacent to a public sidewalk is not clearly established, then for purposes of this article, the sidewalk is deemed to extend 10 feet away from the roadway from the curb line or pavement of the roadway.

(Added by Ord. 14-35; Am. Ord. 15-14)

Sec. 29-15A.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. 14-35)

Article 15B. Sitting or Lying on Public Malls in the Downtown and Chinatown Areas

Sections:

29-15B.1 Prohibition—Exceptions—Citations.

29-15B.2 Penalty.

Sec. 29-15B.1 Prohibition—Exceptions—Citations.

- (a) No person shall sit or lie on a public mall, or on a tarp, towel, sheet, blanket, sleeping bag, bedding, planter, chair, bench, or any other object or material placed upon a public mall during the following hours:
- (1) College Walk Mall. Sunday through Saturday, all hours.
 - (2) Fort Street Mall. Sunday through Saturday from 5:00 a.m. to 10:00 p.m.
 - (3) Kekaulike Mall. Sunday through Saturday from 5:00 a.m. to 7:00 p.m.
 - (4) Kila Kalikimaka Mall. Sunday through Saturday, all hours.
 - (5) Sun Yat Sen Mall. Monday through Friday from 5:00 a.m. to 7:00 p.m.
 - (6) Union Mall. Sunday through Saturday, all hours.
- (b) The prohibitions in subsection (a) shall not apply to:
- (1) Any person sitting or lying on a public mall due to a medical emergency;
 - (2) Any person who, as a result of a disability, is utilizing a wheelchair or other similar wheeled chair device to move about the public mall;
 - (3) Any person sitting or lying on the public mall for the purpose of engaging in an expressive activity;
 - (4) Any person sitting on the public mall while attending or viewing any festival, performance, rally, demonstration or similar event conducted on the public mall pursuant to a permit issued by the city;
 - (5) Any person engaged in a maintenance, repair or construction activity on behalf of a governmental entity or a public utility;
 - (6) Any child who is sitting or lying in a baby carriage, stroller, or carrier, or similar device, to move about the public mall;
 - (7) Any person sitting on a chair or bench located on the public mall that is placed there by a public agency or pursuant to permit issued by the city;
 - (8) Any person sitting in line for goods or services unless the person or person's possessions impede the ability of pedestrians to travel along the length of the mall or enter a doorway or other entrance alongside the mall; and
 - (9) Any person engaging in an authorized activity on the mall pursuant to a permit issued by the director of parks and recreation in accordance with department of parks and recreation rules.
- (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.
- (d) As used in this section:
- "College Walk Mall" means the same as "College Walk Mall" in Section 29-1.1.
- "Expressive activity" means speech or conduct, the principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of political, religious, philosophical, or ideological opinions, views, or ideas, and for which no fee is charged or required as a condition of participation in or attendance at such activity. Expressive activity generally would not include sports events, such as marathons; fundraising events; beauty contests; commercial events; cultural celebrations or other events the principal purpose of which is entertainment.
- "Fort Street Mall" means the portion of Fort Street established as a pedestrian mall under Section 15-25.1(b).
- "Kekaulike Mall" means the area of Kekaulike Street, between Hotel Street and King Street.
- "Kila Kalikimaka Mall" means the area immediately adjacent to the parcel designated by TMK 1-7-026:010, from College Walk Mall to Aala Street.
- "Mall," when used generally in this article, means collectively the College Walk Mall, Fort Street Mall, Kekaulike Mall, Kila Kalikimaka Mall, Sun Yat Sen Mall, and Union Mall.
- "Sun Yat Sen Mall" means the same as "Sun Yat Sen Mall" in Section 29-1.1.
- "Union Mall" means the portion of Union Street established as a pedestrian mall under Section 15-25.1(a).

(Added by Ord. 15-1; Am. Ord. 15-40)

Sec. 29-15B.2 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. 15-1)

(Article 16. Performing on Public Sidewalks. Repealed)*

[*Editor's Note: Pursuant to Section 3 of Ordinance 00-08, this article was to be repealed as of April 11, 2003. However, this article was declared unconstitutional and its enforcement enjoined by a state court in Williams, et al. v. City and County of Honolulu, et al., Civil No. 00-1-2039-06 VLC.]

Article 16. Nuisances on Public Sidewalks

Sections:

29-16.1 Council finding and declaration of nuisance.

29-16.2 Definitions.

29-16.3 Summary removal of sidewalk-nuisances.

29-16.4 Rules.

- 29-16.5 Miscellaneous provisions.**
- 29-16.6 Exceptions.**
- 29-16.7 City not liable.**
- 29-16.8 Severability.**

Sec. 29-16.1 Council finding and declaration of nuisance.

The Council finds and declares that objects erected, established, placed, constructed, maintained, kept or operated on sidewalks to be public nuisances, hazardous to the health, safety, and welfare of the residents of the city, and therefore, shall be subject to summary removal pursuant to this article. Nuisances on public sidewalks are inconsistent with and frustrate the purposes, functions, and activities for which the sidewalk is intended. The purpose of this article is to promote traffic and pedestrian health, safety, and welfare; prevent visual blight; and ensure that the sidewalk is free of obstacles and available for use and enjoyment of members of the public.

(Added by Ord. 13-8)

Sec. 29-16.2 Definitions.

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

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

“Expressive activity” means speech or conduct, the principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of political, religious, philosophical, or ideological opinions, views, or ideas, and for which no fee is charged or required as a condition of participation in or attendance at such activity. Expressive activity generally would not include sports events, such as marathons; fundraising events; beauty contests; commercial events; cultural celebrations or other events the principal purpose of which is entertainment.

“Roadway” means that portion of a street improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.

“Sidewalk” includes sidewalks and replacement sidewalks.

“Sidewalk-nuisance” means any object or collection of objects constructed, erected, installed, maintained, kept, or operated on or over any sidewalk, including but not limited to structures, stalls, stands, tents, furniture, and containers, and any of their contents or attachments.

(Added by Ord. 13-8)

Sec. 29-16.3 Summary removal of sidewalk-nuisances.

(a) No person shall erect, establish, place, construct, maintain, keep or operate any sidewalk-nuisance on any sidewalk, except as provided in Section 29-16.6 or as otherwise authorized by law. Any sidewalk-nuisance in violation of this subsection shall be subject to summary removal.

(b) The director may immediately and summarily remove or cause the immediate and summary removal of a sidewalk-nuisance. A sidewalk-nuisance may be disassembled for removal.

(1) The director shall store or cause to be stored any sidewalk-nuisance removed pursuant to this subsection until the director is authorized to destroy, sell, or otherwise dispose of the sidewalk-nuisance pursuant to the applicable provisions of this section, but in no event less than 30 calendar days from the date of removal.

(2) Notification.

(A) Written notice of the city's removal of the sidewalk-nuisance shall be posted for three consecutive days following removal of the sidewalk-nuisance on the public property where the sidewalk-nuisance was removed. If notice cannot be posted as provided, then it shall be posted on the internet website for the city for three consecutive days following removal of the sidewalk-nuisance.

(B) The written notice shall state:

- (i) The date, violation and removal of the sidewalk-nuisance;
- (ii) That the owner may reclaim the sidewalk-nuisance within 30 calendar days from the date of the removal of the sidewalk-nuisance;
- (iii) Contact information and instructions on how the owner may reclaim the sidewalk-nuisance;
- (iv) That the owner has the right to appeal the removal of the sidewalk-nuisance in accordance with subsection (d); and
- (v) That, if not timely reclaimed or the subject of timely appeal, the sidewalk-nuisance shall be subject to disposal.

(C) If a name and mailing address has been legibly and conspicuously provided on a sidewalk-nuisance removed pursuant to this subsection, then the director also shall issue a written notice, by certified mail, to the person named on the sidewalk-nuisance within seven calendar days following the date of the removal of the sidewalk-nuisance; provided that if only an address is provided on a sidewalk-nuisance, the director shall issue a written notice, by certified mail, addressed to the “Occupant” of that address, within seven calendar days following the date of the removal of the sidewalk-nuisance. No such notice shall be required if only the name is provided and the director is unable after a good faith effort to determine the address of the named person.

(D) Shopping Carts. If a shopping cart is removed and impounded pursuant to this subsection, the city shall notify the Retail Merchants Association or its successor organization, of the location where the shopping cart may be claimed. The Retail Merchants Association or its successor organization shall notify the owner of the shopping cart or owner's agent of the location where the shopping cart may be claimed. The owner or owner's agent shall have three business days from the date the city notifies the Retail Merchants Association or its successor organization to retrieve the shopping cart without charge. If the owner or owner's agent fails to retrieve the shopping cart within three

business days, the shopping cart shall be treated as a removed sidewalk-nuisance pursuant to this subsection, and written notice shall be provided as in subsection (b)(2), and the owner shall be subject to a fee pursuant to subsection (c), unless the owner successfully contests the removal as provided in subsection (d).

- (3) The director may destroy, sell, or otherwise dispose of a sidewalk-nuisance removed under the provisions of this subsection after a period of 30 calendar days from the date of removal of the sidewalk-nuisance unless a timely appeal has been filed under subsection (d).
- (c) A sidewalk-nuisance removed pursuant to this section may be reclaimed by the owner within the applicable 30-day period specified in subsection (b). To reclaim a sidewalk-nuisance, an owner or the owner's authorized representative shall make arrangements with the director to reclaim the sidewalk-nuisance; shall appear in person within the applicable 30-day period at the time and place designated by the director; shall provide satisfactory proof of identity and entitlement; and shall pay to the city a \$200.00 fee for the city's cost of removal, storage and handling of the sidewalk-nuisance, whereupon the city shall release the sidewalk-nuisance to the owner or the owner's authorized representative, as is.
- (d) An owner of a sidewalk-nuisance removed pursuant to this section may contest the removal by written request for a hearing to the director received no later than 25 calendar days after removal of the sidewalk-nuisance. The owner shall provide a current mailing address to receive the notice of the decision of the director regarding the appeal. The hearing shall be conducted by the director in accordance with the provisions of HRS Chapter 91. The appeal shall be limited to a determination of whether the sidewalk-nuisance was properly removed and a fee properly assessed pursuant to this section. The director shall continue to store or have stored the sidewalk-nuisance until the appeal has been decided. If the decision of the director is in favor of the owner, then the owner may arrange to reclaim the sidewalk-nuisance without paying the fee for the removal, storage, and handling of the sidewalk-nuisance. If the decision of the director is in favor of the city, then the sidewalk-nuisance may be returned to the owner or the owner's authorized representative upon payment of the removal, storage, and handling fee of \$200.00. If the owner or the owner's authorized representative fails to reclaim the sidewalk-nuisance within seven calendar days of the postmark for the notice of the decision, the sidewalk-nuisance may be destroyed, sold, or otherwise disposed of by the director.

(Added by Ord. 13-8)

Sec. 29-16.4 Rules.

The director may adopt rules pursuant to HRS Chapter 91 for the implementation of this article.

(Added by Ord. 13-8)

Sec. 29-16.5 Miscellaneous provisions.

- (a) The provisions of this article shall be in addition to and shall not limit any other applicable provisions of federal, state or city law, ordinance, or rule.
- (b) The provisions of this article shall not create a duty on the part of the city regarding sidewalk accessibility other than is already required by law.

(Added by Ord. 13-8)

Sec. 29-16.6 Exceptions.

The prohibitions in this article shall not apply to the following:

- (1) An object or collection of objects smaller than 42 inches in length, 25 inches in width, and 43 inches in height, provided that:
- (A) The object or collection of objects is attended to by an individual at all times;
 - (B) The object or collection of objects, or any portion thereof, does not extend into the roadway;
 - (C) The object or collection of objects does not obstruct the use of 36 inches in width of the sidewalk and does not obstruct the free movement of pedestrians;
 - (D) The object or collection of objects does not obstruct individuals from access to or egress from legally parked vehicles;
 - (E) The object or collection of objects does not interfere with other lawful activities taking place on the sidewalk and its placement complies with other provisions of this chapter; and
 - (F) The object or collection of objects does not otherwise threaten public health and safety.
- (2) An object or collection of objects used in the performance of a government-approved public safety, maintenance or construction function; or
- (3) Tables or other portable outdoor furniture or items used for the purpose of displaying literature or other expressive material or otherwise directly facilitating expressive activities; provided that the tables, furniture, or items:
- (A) Are attended to by an individual at all times;
 - (B) Do not extend into the roadway;
 - (C) Do not obstruct the use of 36 inches in width of the sidewalk and do not obstruct the free movement of pedestrians;
 - (D) Do not obstruct individuals from access to or egress from legally parked vehicles;
 - (E) Do not interfere with other lawful activities taking place on the sidewalk and comply with other provisions of this chapter;
 - (F) Do not otherwise threaten public health and safety; and
 - (G) Are not larger than five feet by two feet or ten square feet for each individual engaging in the expressive activity.

(Added by Ord. 13-8)

Sec. 29-16.7 City not liable.

The owner of a removed sidewalk-nuisance shall bear the responsibility for any loss or damage to the sidewalk-nuisance. The city, its officers, employees, and agents shall not be liable to any person entitled to a removed sidewalk-nuisance because of any disposal or other disposition of the property made pursuant to this article.

The remedies available to a person entitled to a removed sidewalk-nuisance are limited to those provided in this article.
(Added by Ord. 13-8)

Sec. 29-16.8 Severability.

The provisions of this article are declared to be severable. If any portion of this article is held invalid for any reason, the validity of any other portion of this article which may be given effect without the invalid portion shall not be affected and if the application of any portion of this article to any person, property or circumstance is held invalid, the application of this article to any other person, property or circumstance shall not be affected.

(Added by Ord. 13-8)

Article 17. Aggressive Panhandling

Sections:

- 29-17.1 Definitions.**
- 29-17.2 Aggressive panhandling—Where prohibited.**
- 29-17.3 Penalty, summons or citation.**
- 29-17.4 Severability.**

Sec. 29-17.1 Definitions.

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

“Automated teller machine” means a device, linked to a financial institution’s account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

“Automated teller machine facility” means the area comprised of one or more automatic teller machines and any adjacent space that is made available to banking customers after regular banking hours.

“Aggressive panhandling” means engaging in the following behavior in the course of a solicitation of another person:

- (1) Persisting in soliciting money from, following, or approaching a person after the person has given a negative response by either words or conduct to a solicitation for money;
- (2) Intentionally touching or causing physical contact with a person being solicited without that person’s consent;
- (3) Intentionally blocking or interfering with the safe or free passage of a person exiting or entering a vehicle near an automated teller machine;
- (4) Using violent or threatening gestures toward a person being solicited;
- (5) Using profane or abusive language that is likely to provoke an immediate violent reaction from the person being solicited; or
- (6) Approaching or following a person being solicited in a group of two or more persons, in a manner and with conduct, words, or gestures intended or likely to cause a reasonable person to fear imminent bodily harm or damage to or loss of property or otherwise to be intimidated into giving money or other thing of value.

“Check” means any check, draft, money order, or other instrument for the transmission or payment of money. “Check” does not include a traveler’s check, foreign denomination, or foreign drawn payment instrument.

“Check cashing business” means any business engaged in the cashing of checks. This article shall not apply to:

- (1) Any person who is principally engaged in the bona fide retail sale of goods or services, and who, either as incident to or independent of the retail sale or service, from time to time cashes items for a fee or other consideration, where not more than \$2, or two percent of the amount of the check, whichever is greater, is charged for the service; or
- (2) Any person authorized to engage in business as a bank, trust company, savings bank, savings and loan association, financial services loan company, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia.

“Donation” means any item of value, monetary or otherwise accepted by a panhandler.

“Panhandling” or “soliciting” means any solicitation made in person upon any street or public place in the city in which a person requests an immediate donation from another person. The term does not include passively standing or sitting nor does it include performing music, singing, or conducting other street performances with a sign or other indication that money is being sought without any spoken request other than in response to an inquiry by another person.

“Public place” means any area to which the public is invited or permitted, and includes the public sidewalk or way.

(Added by Ord. 08-2)

Sec. 29-17.2 Aggressive panhandling—Where prohibited.

No person shall engage in aggressive panhandling within 10 feet in any direction of any automated teller machine, automated teller machine facility, or check cashing business. The distance to a check cashing business or automatic teller machine facility shall be measured from the entrance or exit of the facility. (Added by Ord. 08-2)

Sec. 29-17.3 Penalty, summons or citation.

- (a) Penalty. Any person violating this article shall be subject to a fine of \$25.00 of each offense.

- (b) Summons or Citation.
- (1) There shall be provided for use by authorized police officers, or authorized special police officers, a form of summons or citation for use in citing any violation of this article which does not mandate the physical arrest of the violator. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed as to include all necessary information to make the same valid within the laws and regulations of the state and city. Said summons or citation shall instruct such person to report to the violations bureau of the district court for the district of Honolulu. Each such violator may, within seven days after receipt of such summons, appear at such violations bureau and post a bail bond in such amounts as may be set by the administrative judge of the district court for appearance on the date as may be set out for such person to appear before the district court. Upon failure to appear on such date, said bail bond shall be deemed forfeited. Bail forfeiture by mail shall be permitted.
 - (2) In every case when a citation is issued, the original of the same shall be given to the violator provided, that the administrative judge of the district court may prescribe the giving to the violator of a carbon copy of the citation and provide for the disposition of the original and any other copies.
 - (3) Every citation shall be consecutively numbered, and each carbon copy shall bear the number of its respective original.

(Added by Ord. 08-2)

Sec. 29-17.4 Severability.

The provisions of this article are severable, and if any part of this article should be held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of the article and the remainder of this article shall stay in full force and effect. (Added by Ord. 08-2)

Article 18. Use of Sidewalk for Pedestrian Use

Sections:

- 29-18.1 Limitation.**
- (29-18.2 Placing objects on or above the pedestrian use zone. Repealed by Ord. 11-29)**
- 29-18.2 Reserved.**
- 29-18.3 Applicability.**
- 29-18.4 Exceptions.**
- 29-18.5 Penalty.**
- 29-18.6 Marking of boundaries of pedestrian use zone.**
- (29-18.7 Stored property; Impoundment. Repealed by Ord. 11-29)**
- 29-18.7 Reserved.**
- 29-18.8 Rules.**

Sec. 29-18.1 Limitation.

- (a) Except as otherwise provided in Section 29-18.4, only a pedestrian may use the pedestrian use zone in accordance with this article.
- (b) It is an affirmative defense to prosecution under this article that the behavior occurred within one foot of the curbside boundary of the pedestrian use zone, that the boundary of the zone was not marked, and the person believed in good faith that the person was not in the pedestrian use zone.

(Added by Ord. 10-26)

(Sec. 29-18.2 Placing objects on or above the pedestrian use zone. Repealed by Ord. 11-29)

Sec. 29-18.2 Reserved

Sec. 29-18.3 Applicability.

- (a) The requirements and restrictions of this article shall apply only to the urban zone between the hours of 5:00 a.m. to 10:00 p.m., except that in the Waikiki district the requirements and restrictions of this article shall apply between the hours of 6:00 a.m. on any one day until 2:00 a.m. of the succeeding day. The city may extend these hours in one or more of the areas described in subsection (b) when the requirements and restrictions of this article shall apply, during an emergency or for special security reasons. For the purposes of this subsection, an emergency means a natural disaster, such as a fire, flood, tsunami, earthquake, or other natural calamity, or a man-made disaster, including those caused by sabotage or other hostile action.
- (b) For the purposes of this article, the Ala Moana/Kakaako district is the area whose boundaries are shown in Exhibit A, the Downtown district is the area whose boundaries are shown in Exhibit B, the Kalihi district is the area whose boundaries are shown in Exhibit C, the McCully/Moiliili/Makiki district is the area whose boundaries are shown in Exhibit D, and the Waikiki district is the area whose boundaries are shown in Exhibit E.

(Added by Ord. 10-26)

Sec. 29-18.4 Exceptions.

The prohibitions in this article shall not apply to persons:

- (a) Unable to comply due to suffering a medical emergency;

- (b) Who are acting as authorized or allowed by any article under this chapter or any other ordinance, permit, regulation or statute;
- (c) Performing a government-approved public safety, maintenance or construction function;
- (d) Participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on the public sidewalk pursuant to and in compliance with an applicable permit;
- (e) Sitting on a chair or bench supplied or permitted by a public agency;
- (f) Waiting in line for goods or services unless the person refuses to comply with a lawful order of a police officer to form the line in a way that moderates impact on passage along the sidewalk;
- (g) Waiting at a bus stop or taxi stand for a bus or a taxi;
- (h) Moving freight or merchandise for commercial purposes; or
- (i) Who are engaged in expressive activities or who are using tables or other portable outdoor furniture or items for the purpose of displaying literature or other expressive material or otherwise directly facilitating expressive activities; provided that the tables, furniture, or items do not obstruct the free movement of pedestrians through the pedestrian use zone, do not interfere with other lawful activities taking place on the sidewalk and comply with other provisions of this chapter; and provided further that no table, item of furniture, or other item shall be larger than five feet by two feet or 10 square feet for each person engaging in the expressive activity.

(Added by Ord. 10-26)

Sec. 29-18.5 Penalty.

Any person violating any provision of this article shall, upon conviction, be subject to a maximum penalty of \$50.00. In lieu of this penalty, a judge may sentence a person found to have violated any provision of this article to community service for such period as determined by the judge. (Added by Ord. 10-26)

Sec. 29-18.6 Marking of boundaries of pedestrian use zone.

The city may mark the boundary or boundaries of the pedestrian use zone. (Added by Ord. 10-26)

(Sec. 29-18.7 Stored property; Impoundment. Repealed by Ord. 11-29)

Sec. 29-18.7 Reserved

Sec. 29-18.8 Rules.

In accordance with HRS Chapter 91, the department of facility maintenance or a department designated by the mayor may adopt rules having the force and effect of law for the implementation, administration, and enforcement of this article. (Added by Ord. 10-26)

Article 19. Stored Property

Sections:

- 29-19.1 Declaration of legislative intent – Purpose.**
- 29-19.2 Definitions.**
- 29-19.3 Stored property – Impoundment.**
- 29-19.4 Notice.**
- 29-19.5 Storage and disposal.**
- 29-19.6 Proceeds of sale.**
- 29-19.7 Repossession.**
- 29-19.8 City not liable.**

Sec. 29-19.1 Declaration of legislative intent – Purpose.

Public property should be accessible and available to residents and the public at large for its intended uses. The unauthorized use of public property for the storage of personal property interferes with the rights of other members of the public to use public property for its intended purposes and can create a public health and safety hazard that adversely affects residential and commercial areas. The purpose of this article is to maintain public areas in clean, sanitary, and accessible condition, to prevent harm to the health or safety of the public, to prevent the misappropriation of public property for personal use, and to promote the public health, safety and general welfare by ensuring that public property remains readily accessible for its intended uses. (Added by Ord. 11-29)

Sec. 29-19.2 Definitions.

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

“Medial strip” means the same as “medial strip” in Section 15-2.23.

“Personal property” means any and all tangible property, and includes, but is not limited to, items, goods, materials, merchandise, furniture, equipment, fixtures, structures, clothing, and household items. The term shall not include any vehicle as defined in HRS Section 291C-1, any vessel as defined in HRS Section 200-23, or any property subject to HRS Chapter 523A.

“Public property” means all property that is owned, managed or maintained by the city, and shall include, but not be limited to any street, sidewalk, replacement sidewalk, medial strip, space, ground, mall, building, structure, public park, and any other property of the city.

“Sidewalk” means the same as “sidewalk” in HRS Section 291C-1.

(Added by Ord. 11-29)

Sec. 29-19.3 Stored property – Impoundment.

- (a) No person shall store personal property on public property. All stored personal property may be impounded by the city. In the event personal property placed on public property interferes with the safe or orderly management of the premises or poses a threat to the health, safety, or welfare of the public, it may be impounded at any time by the city.
- (b) Personal property placed on public property shall be deemed to be stored personal property if it has not been removed from public property within twenty-four hours of service of the written notice required by Section 29-19.4, which requires such removal, and the city may cause the removal and impoundment of such stored personal property; provided that moving the personal property to another location on public property shall not be considered to be removing the personal property from public property; and provided further that this section shall not apply to personal property that, pursuant to statute, ordinance, permit, regulation, or other authorization by the city or state, is placed on property that is owned or controlled by the city.

(Added by Ord. 11-29)

Sec. 29- 19.4 Notice.

- (a) The written notice required to be served by subsection (b) of Section 29-19.3 shall be deemed to have been served if a copy of the written notice is served on the person storing the personal property or is posted prominently and conspicuously on the stored personal property. The written notice shall contain the following:
 - (1) A description of the personal property to be removed (such description may refer to an attached photograph).
 - (2) The location of the personal property.
 - (3) The date and time the notice was posted.
 - (4) The section of the ROH that is being violated.
 - (5) A statement that the personal property will be impounded if not removed within 24 hours.
 - (6) The location where the removed property will be stored.
 - (7) A statement that impounded property will be sold or otherwise disposed of if not claimed within 30 days after impoundment.
 - (8) A statement that the property owner shall be responsible for all costs of removal, storage and disposal.
- (b) Shopping Carts. If a shopping cart is removed and impounded pursuant to Section 29-19.3, the city shall notify the Retail Merchants Association or its successor organization, of the location where the shopping cart may be claimed. The Retail Merchants Association or its successor organization shall notify the owner of the shopping cart or owner's agent of the location where the shopping cart may be claimed. The owner or owner's agent shall have three business days from the date the city notifies the Retail Merchants Association or its successor organization to retrieve the shopping cart without charge. If the owner or owner's agent fails to retrieve the shopping cart within three business days, the shopping cart shall become impounded property as provided in Section 29-19.5(a), written notice shall be provided as in Section 29-19.5(b), and the owner shall be subject to any applicable fees and costs imposed pursuant to Section 29-19.5(a). Any shopping cart not reclaimed by the owner or owner's agent within 30 days after the date of written notice may be disposed of as personal property valued at less than \$1,000.

(Added by Ord. 11-29)

Sec. 29-19.5 Storage and disposal.

- (a) Impounded personal property shall be moved to a place of storage, and the owner shall be assessed moving, storage, and other related fees and costs. Additionally, the owner of impounded personal property shall bear the responsibility for the risk of any loss or damage to the impounded property.
- (b) At least 30 days prior to disposal of impounded personal property, the city shall serve notice in writing apprising the owner of the personal property of the description and location of the impounded personal property and of the intent of the city to sell, donate, or otherwise dispose of the impounded property. Service of written notice shall be by personal service or by certified mail, return receipt requested, to the last known address of the owner of the impounded property if the owner is known or can be determined. Where the identity or the address of the owner is unknown or cannot be determined through the exercise of reasonable diligence, the notice shall be posted for three consecutive days on the public property where the property was stored or seized. If notice cannot be posted as provided heretofore, then it shall be posted on the internet website of the city for three consecutive days.
- (c) If any item of impounded personal property has an estimated value of \$1,000 or more, the city shall also give public notice of its disposal, including a brief description of the property, details of the time and place of the auction and giving notice to all persons interested in claiming the property that unless claims are made by persons who can provide satisfactory proof of ownership before a specified date, the property will be sold at public auction to the highest bidder. Such public notice shall be published at least once in a publication of statewide circulation or in a publication of local circulation where the property was impounded; provided that the disposal shall not take place less than five days after public notice has been given. Following proper notices as provided in subsections (b) and (c), any item of impounded personal property having an estimated value of \$1,000 or more shall be disposed of by public auction, through oral tenders, or by sealed bids. Where no bid is received, the impounded personal property may be sold by negotiation, disposed of or sold as junk, kept by the city or donated to any other government agency or charitable organization.
- (d) The requirement for public notice and public auction shall not apply when the estimated value of the impounded personal property is less than \$1,000. In that event, the impounded personal property may be sold by negotiation, disposed of or sold as junk, kept by the city or donated to any other government agency or charitable organization.
- (e) Any impounded property of a perishable nature may be disposed of immediately in any manner without notice after impoundment by the city.
- (f) The city shall maintain a record of the date and method of disposal of the impounded personal property, including the consideration received for the property, if any, and the name and address of the person taking possession of the property. Such record shall be kept as a public record for a period of not less than one year from the date of disposal of the property.

(Added by Ord. 11-29)

Sec. 29-19.6 Proceeds of sale.

All fees and unpaid rent, debts and charges owing and all expenses of handling, storage, appraisal, advertising, and other sale expenses incurred by the city shall be deducted from the proceeds of any sale of the impounded property. Any amount remaining shall be held in trust for the owner of the property for 30 days after sale, after which time the proceeds shall be paid into the general fund. (Added by Ord. 11-29)

Sec. 29-19.7 Repossession.

The owner or any other person entitled to the impounded personal property may repossess the property prior to its disposal upon submitting satisfactory proof of ownership or entitlement and payment of all unpaid rent, debts, and charges owing and all handling, storage, appraisal, advertising, and other expenses incurred by the city in connection with the proposed disposal of the impounded property. (Added by Ord. 11-29)

Sec. 29-19.8 City not liable.

The City and County of Honolulu, its officers, employees, and agents shall not be liable to the owner of impounded personal property because of any disposal of the property made pursuant to this article. The remedies available to the owner of impounded property are limited to those provided in this article. (Added by Ord. 11-29)