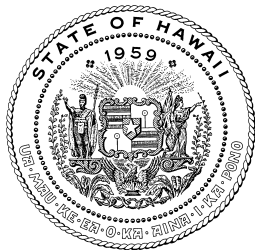


**Small Business Regulatory Review Board Meeting**

**October 19, 2023**

**10:00 a.m.**



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813  
Mailing Address: P.O. Box 2359, Honolulu, HI 96804  
Email: [dbedt.sbrb.info@hawaii.gov](mailto:dbedt.sbrb.info@hawaii.gov)  
Website: [sbrb.hawaii.gov](http://sbrb.hawaii.gov)

Tel: 808 798-0737

### AGENDA

**Thursday, October 19, 2023 ★ 10:00 a.m.**

**Leiopapa A Kamehameha Building – State Office Tower  
235 S. Beretania Street, Conference Room 405  
Honolulu, HI 96813**

As authorized under Act 220, Session Laws of Hawaii 2021 and Chapter 92-3.7  
Hawaii Revised Statutes (HRS), the public can participate in the meeting either:

#### **A. By attending the in-person meeting at:**

**Leiopapa A Kamehameha Building – State Office Tower 235 S. Beretania Street,  
Conference Room 405, Honolulu, HI 96813; or**

#### **B. Via Video-audio livestream or via Telephone - to join the Video-audio livestream meeting, go to:**

<https://us06web.zoom.us/j/88945374966?pwd=cDhqWEEzZGZHYmJLM05tMHU5Mm5HQ09>

#### **C. To Join via Telephone: Dial 1-669-900-6833 with Meeting ID 883 5814 0200 Passcode 066739**

When the Chairperson asks for public testimony during the meeting, you may indicate that you want to provide oral testimony by using the raise hand function or, if calling in by telephone, entering \* and 9 on your phone keypad. When recognized by the Chairperson, you will be unmuted. If calling in by phone, you can unmute and mute yourself by pressing \* and 6 on your keypad.

Members of the public may also submit written testimony via e-mail to:

[DBEDT.sbrb.info@hawaii.gov](mailto:DBEDT.sbrb.info@hawaii.gov) or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506A, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. The Board requests that written testimony be received by Wednesday, October 18, 2023 so it may be distributed to Board members prior to the meeting. Testimony received after that time will be distributed to the Board members at the meeting.

Copies of the Board Packet will be available on-line for review at: [Agendas & Minutes – Small Business Regulatory Review Board \(hawaii.gov\)](#). An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

The Board may go into Executive Session under  
Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues  
Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

#### **I. Call to Order**

#### **II. Approval of September 21, 2023 Meeting Minutes**

**Josh Green, M.D.**  
*Governor*

**Sylvia Luke**  
*Lt. Governor*

**James K. Tokioka**  
*DBEDT Director*

**Dane K. Wicker**  
*DBEDT Deputy  
Director*

#### **Members**

**Mary Albitz**  
*Chairperson  
Maui*

**Robert Cundiff**  
*Vice Chairperson  
O'ahu*

**Jonathan Shick**  
*2nd Vice Chairperson  
O'ahu*

**Dr. Nancy**  
*Atmospera-Walch  
O'ahu*

**William Lydgate**  
*Kaua'i*

**James (Kimo) Lee**  
*Hawai'i*

**Garth Yamanaka**  
*Hawai'i*

**Sanford Morioka**  
*O'ahu*

**Tessa Gomes**  
*O'ahu*

**Mark Ritchie for  
Director, DBEDT  
Voting Ex Officio**

### III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 16 Chapter 39, **Securities**, promulgated by Department of Commerce and Consumer Affairs – *Discussion Leader – Tessa Gomes*
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 31, **Molokini Shoal Marine Life Conservation District, Maui**, promulgated by Department of Land and Natural Resources (DLNR) – *Discussion Leader – Jonathan Shick*
- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 230, **General Provisions**, promulgated by DLNR – *Discussion Leader – Jonathan Shick*
- D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 257, **Day-Use Mooring Rules**, promulgated by DLNR – *Discussion Leader – Jonathan Shick*

### IV. New Business

- A. Discussion and Action on Proposed Amendments to HAR Title 17 Chapter 799, **Preschool Open Doors Program**, promulgated by Department of Human Services – *Discussion Leader – Sanford Morioka*
- B. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 217, **Kakaako Mauka Area Rules**, promulgated by Department of Business, Economic Development and Tourism – *Discussion Leader – Mary Albitz*

### V. Administrative Matters

- A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes
  - 1. Discussion with Becker Communications' Representative about creating a YouTube Video for the Board's outreach purposes
  - 2. Presentations to Industry Associations
  - 3. Staff's Small Business Outreach

### VI. Next Meeting: Thursday, November 16, 2023 at 10:00 a.m., held via Zoom and at Leiopapa A Kamehameha Building – State Office Tower, Conference Room 405, Honolulu, HI 96813

### VII. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Jet'aime Ariola at 808 798-0737 and [jetaime.k.ariola@hawaii.gov](mailto:jetaime.k.ariola@hawaii.gov) as soon as possible, preferably at least three (3) working days prior to the meeting. Requests made as early as possible have a greater likelihood of being fulfilled.

Upon request, this notice is available in alternate/accessible formats.

## **II. Approval of September 21, 2023 Meeting Minutes**



## Small Business Regulatory Review Board

### MEETING MINUTES - **DRAFT** September 21, 2023

#### ZOOM RECORDING

- I. **CALL TO ORDER:** Chair Albitz called the meeting to order at 10:00 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Mary Albitz, Chair
- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- Garth Yamanaka
- Sanford Morioka
- Tessa Gomes
- Mark Ritchie

**ABSENT MEMBERS:**

- Robert Cundiff, Vice Chair
- Dr. Nancy Atmospera-Walch
- William Lydgate
- James (Kimo) Lee

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF August 17, 2023 MINUTES**

Mr. Ritchie motioned to accept the August 17, 2023 meeting minutes, as amended. Second Vice Chair Shick seconded the motion and the Board unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 109, Rules for Establishing Forest Stewardship, promulgated by Department of Land and Natural Resources (DLNR)

Ms. Tanya Rubenstein, Cooperative Management Forester, from DLNR's Division of Forestry and Wildlife (DFW), presented an overview of the division's program. The presentation encompassed explaining what the forest stewardship program is, who participates in the program, objectives of the management plan along with incentives and examples of its practices, the purpose of participating in the program, and the types of forest stewardship projects.

Also discussed was the forest stewardship advisory committee and its role, the internal procedures for landowners, and the purpose and reasons for the proposed amendments. The Board of Land and Natural Resources approved DFW to proceed with the rule proposal in August. It was confirmed that this voluntary program, which has not been amended since 1999, will have a positive small business impact, which will help the state's ecological-tourism

companies. The proposed amendments are also intended to be more streamlined and user-friendly for landowners.

Regarding an inquiry into the cost of the program, it was noted that the implementation of new projects has been nil due to the pandemic; as such, the state legislature will be approached in 2024 to request needed funds for the forestry budget. There is also a possibility of receiving federal grant funds. As to the question about taking out invasive species, Ms. Rubenstein acknowledged that there is a management practice called “weed control” which is used prior to planting plants to assist with controlling invasive species.

Second Vice Chair Shick motioned to move the proposed amended rules to public hearing. Chair Albitz seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 71, Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules, promulgated by Department of Agriculture (DoAg)

Mr. Christopher Kishimoto, Entomologist from DoAg, explained that the proposed amendment is to assist DLNR's Division of Aquatic Resources, which is the primary agency responsible for putting the northern large-mouth bass on the list of restricted animals. The purpose of this request is for a one-time import to perform testing to determine whether the bass can be safely released into Wahiawa public fishing area to help add diversity to the existing population already in existence.

Second Vice Chair Shick motioned to move the proposed amended rules to public hearing. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed New HAR Title 19 Subtitle 5 Chapter 152, State Highway Enforcement Program, promulgated by Department of Transportation (DOT)

Ms. Laura Manuel, DOT's Highway Safety Specialist, explained that the purpose of this new rule is to establish the state's highway enforcement program, which adds a surcharge to illegal parking to existing penalties for violations of the state traffic code. This involves stopping, standing, and parking on state highways.

Fifty percent of the state's highway surcharge will be deposited into the state's highway fund with the remaining balance distributed to the respective police departments of the county from which the surcharge was collected. The funds will be used to enforce laws and ordinances pertaining to illegal parking on state highways.

Although there was no apparent impact on small business, one potential impact may be, for example, if a landscaping company performing work on the highway is parked on the side of the highway and receives a violation for doing so. Ms. Manuel added that the new rule was prompted by alleged problems on the Island of Kauai where cars were illegally parked along state highways, specifically at state parks.

Chair Albitz motioned to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments to HAR Chapter 15 Chapter 23, Makai Area Rules, promulgated by Department of Business, Economic Development and Tourism (DBEDT)

Mr. Craig Nakamoto, Executive Director of DBEDT's Hawaii Community Development Authority (HCDA) presented the members with an overview of the rule amendments. The presentation explained HCDA's history, which began in 1976, and its original purpose which was to redevelop Kakaako Community Development Center; since that time, other districts have been added.

The objectives of the proposed rules are to: 1) reflect the 2006 Act 317 ban on residential development; 2) incorporate the community-lead Kakaako Makai Conceptual Master Plan from 2011, and 3) streamline permitting and increase consistency with the latest processes in Kakaako Mauka, which was last updated in 1995.

Overall, the rule amendments are intended to bring consistency with definitions and remove obsolete language, update window requirements, simplify land use categories, remove outdated references, and bring processes in line with current laws and rules that are more user-friendly.

Stakeholders at the public hearing would likely include both private and public landowners, particularly those from the Makai area, Office of Hawaiian Affairs, Bishop Estates as well as the general community having an interest in keeping the Makai area more open. Second Vice Chair Shick noted that there does not appear to be a negative impact on small businesses; the biggest impact is the flat fee of \$200, which will offset staff time.

Mr. Ritchie motioned to move the proposed rules onto the public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

**IV. LEGISLATIVE MATTERS**

A. Review of final proposed Administrative Bill, "Relating to the Small Business Regulatory Review Board"

The proposed bill clarifies that this Board has the authority to review legislation affecting small businesses in response to a request from small business owners.

Ms. Palcovich noted that the Governor's legislative team reviewed the proposal and had no concerns or questions. As such, the bill will be included in the Governor's 2024 Administrative Package.

## **V. ADMINISTRATIVE MATTERS**

### **B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)**

#### **1. Hawaii Small Business Fair at Leeward Community College**

Mr. Ritchie stated that the fair went well this year. There were 32 exhibitors, with 25 to 26 classes offered. It was well attended with about 200 plus attendees. Mr. Ritchie also mentioned that there is an attempt to have similar fairs on neighbor islands. DBEDT staff member, Ms. Ariola, did a great job at marketing this Board at the fair.

#### **2. Presentations to Industry Associations**

The members discussed having a YouTube video created specifically for this Board to discuss what its purview is; it would be linked to the Board's website. The YouTube video, which would be approximately five minutes long, would also be sent to various business organizations for outreach purposes. DBEDT staff will research this idea further with DBEDT's contracted public relations firm, Becker Communications.

#### **3. Staff's Small Business Outreach**

Follow-up letters to the trade and industry associations were sent out this week. Second Vice Chair Shick will attempt to see if a presentation can be made to the Hawaii Chamber of Commerce.

Ms. Gomes mentioned that there will be an annual industry meeting on Tuesday, October 17<sup>th</sup> where approximately 160 small businesses will attend. This would be a good opportunity to discuss what this Board does and to distribute the Board's newly printed brochures.

## **VI. NEXT MEETING - Thursday, October 19, 2023 at 10:00 a.m., in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.**

## **VII. ADJOURNMENT – The meeting adjourned at 11:06 a.m.**

### **III. OLD BUSINESS**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 16 Chapter 39, **Securities**, promulgated by Department of Commerce and Consumer Affairs (DCCA)

**SMALL BUSINESS STATEMENT**  
**“AFTER” PUBLIC HEARING TO THE**  
**SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes (HRS), §201M-3)

**Department or Agency:** \_\_\_\_\_

**Administrative Rule Title and Chapter:** \_\_\_\_\_

**Chapter Name:** \_\_\_\_\_

**Contact Person/Title:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_ **Date:** \_\_\_\_\_

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ **Yes**      ☐ **No**

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

**I. Rule Description:**    ☐ **New**    ☐ **Repeal**    ☐ **Amendment**    ☐ **Compilation**

**II. Will the proposed rule(s) affect small business?**

☐ **Yes**      ☐ **No** (If "No," no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

**III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?**

☐ **Yes**      ☐ **No**

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

**IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))**

☐ **Yes**      ☐ **No**

(If "Yes" no need to submit this form.)

**V. Please explain how the agency involved small business in the development of the proposed rules.**

- a. **Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?**

**VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:**

1. A description of how opinions or comments from affected small businesses were solicited.
2. A summary of the public's and small businesses' comments.
3. A summary of the agency's response to those comments.
4. The number of persons who:
  - (i) Attended the public hearing:
  - (ii) Testified at the hearing:
  - (iii) Submitted written comments:
5. Was a request made at the hearing to change the proposed rule in a way that affected small business?  
☐ **Yes**    ☐ **No**
  - (i) If "Yes," was the change adopted? ☐ **Yes**    ☐ **No**
  - (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This statement may be found on the SBRRB Website at:  
<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

**SMALL BUSINESS STATEMENT  
“AFTER” PUBLIC HEARING TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes (“HRS”) § 201M-3)

**SUPPLEMENTAL RESPONSE**

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS § 92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

Ty Y. Nohara, Commissioner of Securities of the State of Hawaii (“Commissioner”), is proposing amendments to Hawaii Administrative Rules (“HAR”) § 16-39, entitled “Securities.”

The purposes of the proposed amendments are to: (1) add HAR § 16-39-454.5, which will require every investment adviser representative (“IAR”) registered in Hawaii to annually complete 12 continuing education credits to maintain their registration, and (2) make non-substantive amendments throughout HAR § 16-39 for clarity, consistency, and style.

HAR § 16-39-454.5 is based on the Model Rule on Investment Adviser Continuing Education, which was adopted by members of the North American Securities Administrators Association (“NASAA”), a nonprofit association of state, provincial, and territorial securities regulators in the United States, Canada, and Mexico, in November 2020 (“NASAA Model Rule”). Thus far, there are 16 jurisdictions that have adopted similar continuing education requirements based on NASAA’s Model Rule.

- B. Are the draft rules available for viewing in person and on the Lieutenant Governor’s Website pursuant to HRS § 92-7?

☒ Yes ☐ No

(If “Yes,” please provide webpage address and when and where the rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

**<https://cca.hawaii.gov/sec/files/2023/07/Proposed-Amendment-and-Compilation-of-HAR-%C2%A716-39-Ramsever.pdf>**

The proposed amendments may be viewed in person, during the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday, at 335 Merchant Street, Room 201, Honolulu, Hawaii 96813.



- V. Please explain how the agency involved small business in the development of the proposed rules.

Prior to commencing the rulemaking process, the Commissioner reached out to various stakeholders in the investment adviser industry seeking comments and feedback regarding her proposed adoption of HAR § 16-39-454.5. The industry stakeholders primarily consisted of associations and other professional groups representing the interests of persons and businesses, including small businesses, involved in financial planning and insurance services.

In addition, a copy of the proposed amendments was made available to the public, free for viewing and download, on the Department of Commerce and Consumer Affairs' and Office of the Lieutenant Governor's respective websites, which allowed anyone to submit comments and feedback regarding the Commissioner's proposed adoption of HAR § 16-39-454.5.

A public hearing on the proposed adoption of HAR § 16-39-454.5 was held on September 18, 2023, once again offering small businesses the opportunity to provide comments and feedback regarding the Commissioner's proposed adoption of HAR § 16-39-454.5.

- VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

See response to V. above.

2. A summary of the public's and small businesses' comments.

All of the stakeholders, including those representing small businesses, responded to the Commissioner's inquiries by informing that they were in support of the newly proposed rule and did not provide any comments or recommendations. The Commissioner did not receive any negative feedback, with the exception of a single, out-of-state individual, who did not provide any alternative recommendations or suggestions, and merely expressed his disagreement with HAR § 16-39-454.5. Prior to the public hearing, the Commissioner received written testimony supporting the adoption of HAR § 16-39-454.5 from Financial Planning Association Hawaii, an industry stakeholder.

3. A summary of the agency's response to those comments.

Given that the industry stakeholders were in support of the proposed rule and did not provide any comments, suggestions, or feedback, the Commissioner determined that no response was necessary. Likewise, given that the out-of-state individual offered no comments or feedback and merely expressed his disagreement with HAR § 16-39-454.5, the Commissioner determined that a response was not necessary.



FINANCIAL  
PLANNING  
ASSOCIATION  
HAWAII

516 Kawaihae Street E | Honolulu, HI 96825 | 808-394-3451

August 29, 2023

State of Hawai'i  
Department of Commerce & Consumer Affairs  
Business Registration Division  
335 Merchant Street Room 201  
Honolulu, HI 96813

RE: Amendment of HAR Section 16-39, Investment Adviser Representative Continuing Education  
Public Hearing on September 18, 2023 at 9:00 am

After reviewing the proposed rule amendments, the Financial Planning Association of Hawai'i supports the proposed amendments to HAR Section 16-39. We will not be present at the hearing on September 18, 2023.

If you have any questions, please feel free to contact me.

Sincerely Yours,

A handwritten signature in black ink that reads 'Cynthia Takenaka'.

Cynthia Takenaka  
Executive Director

## Small Business Regulatory Review Board

### MEETING MINUTES

July 20, 2023

### ZOOM RECORDING

- I. **CALL TO ORDER:** Chair Albitz called the meeting to order at 10:00 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Mary Albitz, Chair
- Robert Cundiff, Vice Chair
- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- Garth Yamanaka
- James (Kimo) Lee
- Sanford Morioka
- Mark Ritchie

**ABSENT MEMBERS:**

- Dr. Nancy Atmospera-Walsh
- William Lydgate
- Tessa Gomes

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF JUNE 15, 2023 MINUTES**

Second Vice Chair Shick motioned to accept the June 15, 2023 meeting minutes, as presented. Mr. Ritchie seconded the motion and the Board unanimously agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 55, Water Pollution Control, as follows, promulgated by Department of Health (DOH)
- a. Appendix C – Discharges of Storm Water Associated with Construction Activities
  - b. Appendix J – Occasional or unintentional Discharges from Recycled Water Systems
  - c. Appendix L – Discharges of Circulation Water from Decorative Ponds or Tanks

Mr. Darryl Lum, Engineering Supervisor at DOH's Clean Water Branch, explained that the rule changes are for the National Pollutant Discharge Elimination System (NPDES) permits. These permits are required because the Clean Water Branch's mission is to protect the public's health for everyone who uses state waters and to protect and restore the state waters

Mr. Ritchie motioned to move the proposed rules to public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 39, Securities, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader Mr. Lee did not perceive the proposed rule changes to have a significant small business impact. Mr. Keola Fong, Securities Enforcement Attorney at DCCA's Commissioner of Securities of the State of Hawaii, explained that the only small businesses that will be required to comply with the rule proposal are those that are owned by or employ an individual registered or required to be registered with the Commissioner as investment adviser representatives in Hawaii.

While he believes that the rule's impact will be relatively low, any adverse effects will include an additional registration requirement, mandatory continuing education courses, and an individual's related time and costs to maintain his/her registration as an investment adviser representative in Hawaii.

While some of the courses offered by NASAA (North American Securities Administrators Association) are free, a small business' direct costs would include \$36.00 per year for annual reporting fees and the actual cost of the specific course selected by the investment adviser representative to satisfy the mandatory continuing education requirement. However, it was noted that the numerous benefits that will flow to Hawaii investors by the adoption of this newly proposed rule would significantly outweigh the time and costs associated with the additional registration requirement for investment advisor representatives.

Since NASAA implemented the proposed requirements back in 2020, ten states have adopted these practices; two are in the process, with Hawaii being the thirteenth state subject to these educational course requirements.

Several stakeholders were contacted to obtain preliminary feedback. Aside from one individual, who expressed his disagreement with the proposal but did not indicate whether he owned or worked for a small business nor did he provide any recommendations or suggestions, all of the stakeholders were in support of the proposal.

Vice Chair Cundiff motioned to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed New HAR Title 13 Chapter 60.11, Kipahulu Community-Based Subsistence Fishing Area, Maui, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader and Second Vice Chair Shick stated that DLNR's proposal appears very straight-forward and has an overall minor impact. Mr. David Sakoda, Fisheries Program Manager at DLNR's Division of Aquatic Resources (DAR), explained that this is a new rule to establish a marine-managed fishing area in Kipahulu, located in eastern Maui and is about 2.6 square miles of ocean area. DAR is not quite sure what all the potential impacts would be

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-39  
Hawaii Administrative Rules

MM DD, YYYY

1. Chapter 16-39, Hawaii Administrative Rules, entitled, "Securities", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 39

SECURITIES

Subchapter 1 General Provisions

§16-39-101	Definitions
§16-39-102	Filing
§16-39-103	Fees
§16-39-104	Forms
§16-39-105	Action on documents submitted to the commissioner; extension
§16-39-106	Fines and penalties

Subchapter 2 Exempt Transactions and Notice  
Filing Requirements for Federal  
Covered Securities

A. Exempt Transactions

§16-39-201	Limitation on issuers and offerors
§16-39-202	Exemptions
§16-39-203	Notice filing
§16-39-204	Application for residential cooperative corporations
§16-39-205	Disqualification

B. Notice Filing for Federal Covered Securities

§16-39-220	Notice filing for investment company securities
§16-39-221	Notice filing for transactions under the Securities Act, Regulation D, 17 CFR section 230.506

Subchapter 3 Registration of Securities

A. Registration of Securities, Prospectus

§16-39-301	Registration of securities
§16-39-302	Prospectus

B. Statements of Policy Relating to Registration  
of Securities

§16-39-310	Registration of securities by qualification
§16-39-311	Financial reports
§16-39-312	Maximum commissions and expenses
§16-39-313	Offering price

- \$16-39-314 Compliance with Hawaii business registration law
- \$16-39-315 NASAA statements of policy for registration of securities

C. Effectiveness and Post-Effectiveness Requirements

- \$16-39-330 Effectiveness
- \$16-39-331 Confirmations by issuer
- \$16-39-332 Amendments
- \$16-39-333 Renewals
- \$16-39-334 Withdrawal, termination, or completion

D. Advertising and Financial Reports

- \$16-39-340 Advertising
- \$16-39-341 Reports

E. Small Company Offerings Registration

- \$16-39-350 Purpose
- \$16-39-351 Application of this chapter to SCOR registrations
- \$16-39-352 Availability
- \$16-39-353 Disqualification from use of SCOR registration
- \$16-39-354 Agreement by registrant on splits and dividends of stock or ownership interests
- \$16-39-355 Documents to be filed for SCOR registration

Subchapter 4 Registration of Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

#### A. Broker-Dealers

\$16-39-401	Registration; generally
\$16-39-402	Eligibility requirements
\$16-39-403	Application
\$16-39-404	Financial requirements
\$16-39-405	Sales of securities at financial institutions
\$16-39-406	Books and records
\$16-39-407	Post-effective requirements; registration of successor broker-dealer
\$16-39-408	Expiration, renewal, termination of registration

#### B. Agents

\$16-39-420	Registration; generally
\$16-39-421	Eligibility requirements
\$16-39-422	Application
\$16-39-423	Examination requirements
\$16-39-424	Post-effective requirements
\$16-39-425	Expiration, renewal, termination of registration

#### C. Investment Advisers

\$16-39-430	Registration; generally
\$16-39-431	Notice filing for federal covered investment advisers
\$16-39-432	Eligibility requirements
\$16-39-433	Financial requirements
\$16-39-434	Bonding requirements for certain investment advisers
\$16-39-435	Application
\$16-39-436	Custody of client funds or securities by investment advisers
\$16-39-437	Annual financial reporting requirements
\$16-39-438	Examination requirements
\$16-39-439	Disclosure statements
\$16-39-440	Post-effective requirements



§16-39-441	Expiration, renewal, termination of registration
§16-39-442	Books and records

#### D. Investment Adviser Representatives

\$16-39-450	Registration; generally
\$16-39-451	Eligibility requirements
\$16-39-452	Application
\$16-39-453	Examination requirements
\$16-39-454	Post-effective requirements
\$16-39-454.5	Continuing education requirements
\$16-39-455	Expiration, renewal, termination of registration

E. Denial of Application; Suspension and Revocation of Registration of Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

§16-39-470 Denial; suspension and revocation

Subchapter 5    Fraudulent Practices of Broker-Dealers, Broker-Dealer Agents, and Agents of an Issuer

§16-39-501      Fraudulent practices of broker-dealers,  
broker-dealer agents, and agents of an  
issuer

Historical Note: These new rules implement the new securities laws that become effective on July 1, 2008. In 2006, the Legislature passed Act 229, which established the new Hawaii Uniform Securities Act in HRS chapter 485A. Act 229 also repealed the old securities laws in HRS chapter 485 on June 30, 2008. Because these old

securities laws are being repealed, their corresponding administrative rules in HAR chapter 16-38 are also repealed. However, this chapter is based substantially upon chapter 16-38. [Eff 6/4/70; am 1/1/71; 7/30/81; am 11/5/81; am and comp 10/12/85; am 4/4/87; am and com 4/14/03; R 6/30/08; comp ]

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§16-39-101 Definitions.** As used in this chapter, and in the forms, instructions, and orders of the commissioner, the following meanings shall apply to the extent that they are not inconsistent with the definitions provided in chapter 485A, HRS.

"Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

"Amount" means the aggregate dollar value affixed to a share. In the context of capitalization: number of shares multiplied by the par or stated value equals the amount. In the context of an offering: number of shares multiplied by the offering price per unit equals the amount.

"Applicant" means the issuer, broker-dealer, agent, investment adviser, investment adviser representative, or other person executing the application.

"Application" means the form prescribed by the commissioner, and includes any other paper, exhibit, amendment, or document filed pursuant to chapter 485A, HRS, and this chapter in connection with the registration of a security, broker-dealer, agent,

investment adviser, or investment adviser representative.

"Audited financial statements" means financial statements prepared in accordance with generally accepted accounting principles or any standard approved by the PCAOB and examined by independent accountants in accordance with generally accepted auditing standards, accompanied by an opinion of such independent accountants.

"Branch office" means any branch office, sales office, or office of supervisory jurisdiction that is listed on Schedule E to Form BD or on Schedule D to Form ADV; or any location in this State that is held out to the public as a place of business of a broker-dealer, an agent, an investment adviser, an investment adviser representative, or a federal covered investment adviser.

"Broker-dealer services" means the investment banking or securities business as defined by the FINRA.

"CFR" means the Code of Federal Regulations, as amended.

"Commissioner" means the state commissioner of securities.

"Compensation" as used in the definition of "investment adviser" in section 485A-102, HRS, shall include, but not be limited to, a salary, flat fee, any periodic retainer fee, or commissions or other types of monetary remuneration.

"Control" or "controlling person" means possession of the power, authority, or means to engage in the management or policymaking functions of a person, directly or indirectly, through ownership of securities, by contract or otherwise. A person owning at least twenty-five per cent of the outstanding voting securities of another shall be presumed to be a "controlling person" unless and until a determination to the contrary is made by the commissioner based on evidence presented by or on behalf of the person presumed to be controlling.

"CRD" means the Central Registration Depository of FINRA.

"Department" means the state department of commerce and consumer affairs.

"FDIC" means the Federal Deposit Insurance Corporation.

"Financial institution" means any of the following federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions located in this State.

"Financial statements" means, but is not limited to, the statement of financial condition, statement of income, and statement of changes in stockholders' or owners' equity, or similar statements, as well as all related footnotes and supporting schedules applicable thereto, prepared in accordance with generally accepted accounting principles or any standard approved by the PCAOB.

"FINRA" means the Financial Industry Regulatory Authority.

"HRS" means Hawaii Revised Statutes, as amended.

"IARD" means the Internet-based Investment Adviser Registration Depository operated by FINRA to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the commissioner.

"Independent accountants" means independent certified public accountants. The concept of independence shall be defined by rules promulgated by the American Institute of Certified Public Accountants.

"Investment Advisers Act" means the Investment Advisers Act of 1940, as amended.

"Investment Company Act" means the Investment Company Act of 1940, as amended.

"NASAA" means the North American Securities Administrators Association.

"Networking arrangement" means a contractual or other arrangement between a broker-dealer and a financial institution pursuant to which the broker-dealer conducts broker-dealer services on the premises of the financial institution where retail deposits are taken.

"Officer" means a president, vice president, secretary, treasurer, or any other person performing similar functions with respect to any organization, whether incorporated or unincorporated.

"Opinion of independent accountants" means audited financial statements shall be accompanied by an opinion of an independent accountant. The opinion letter shall be dated, shall be signed, shall identify without detailed enumeration the financial statements covered by the opinion, shall state that the examination was conducted in accordance with generally accepted auditing standards and shall express the independent accountant's opinion as to the fairness or unfairness of the financial statements in accordance with generally accepted accounting principles or any standard approved by the PCAOB or the independent accountant's inability to express such an opinion.

"Organization" means a corporation, partnership, trust, association, joint venture, syndicate, limited liability company, and any other form of business entity.

"OTC" means over-the-counter.

"Partnership" means a general partnership, limited partnership, or a limited liability partnership.

"PCAOB" means the Public Company Accounting Oversight Board.

"Predecessor" means a person, a major portion of whose business, assets, or control has been acquired by another.

"Promoter" means a person who, acting alone or in conjunction with others, takes the initiative in founding, organizing, or incorporating the business or enterprise of an issuer.

"Prospectus" means a document meeting the applicable requirements of chapter 485A, HRS, and this chapter.

"Public offering" means the offering of any security for sale to the general public, including, but not limited to:

- (1) By advertisement in any newspaper, magazine, periodical, or other publication, or by

means of a prospectus, offering circular, pamphlet, brochure, dodger, or addressed or unaddressed written or printed communication intended for public distribution or information, including through electronic media; or

- (2) By general solicitation by billboard, window display, website posting, or use of phonographic or other recording, radio, television, or any public demonstration or explanation by any similar device.

"Registrant" means an applicant whose registration of securities has become effective or whose registration as a broker-dealer, agent, investment adviser, or investment adviser representative has been approved under this chapter and chapter 485A, HRS.

"Registration statement" means the application to register securities that is filed with the commissioner.

"SCOR" means small company offering registration.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Securities Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Share" means a share of stock or unit of investment or interest in a corporation, limited partnership, limited liability company, or other unincorporated person, or a share or unit of a security.

"SRO" means self-regulatory organization.

"State" means the State of Hawaii.

"Subsidiary" means an affiliate controlled by another person.

"Underwriter" means a broker-dealer who participates in the distribution of a security, in connection with a public offering, either as a purchaser with a view to offer for resale, or one who undertakes to offer or sell, directly or indirectly, for an issuer. [Eff 6/30/08; comp ]

(Auth: HRS §485A-606) (Imp: HRS §§485A-102, 485A-202)

**§16-39-102 Filing.** (a) Unless otherwise specified, a document is considered filed on the first business day it is received in the office of the commissioner.

(b) All communications shall be addressed to: Commissioner of Securities, Business Registration Division, Department of Commerce and Consumer Affairs, P.O. Box 40, Honolulu, Hawaii 96810; or delivered to: 335 Merchant Street, Room 203, Honolulu, Hawaii 96813.

(c) The office of the commissioner shall be open for the transaction of business between the hours of 7:45 a.m. and 4:30 p.m. on weekdays, excluding state holidays.

(d) All documents, forms, statements, exhibits, etc. filed with the commissioner under chapter 485A, HRS, and this chapter shall be in the English language.

(e) Only originally executed forms or exhibits shall be filed, unless otherwise authorized by the commissioner.

(f) Unless otherwise provided by statute or rule, in computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is seven days or less. A half holiday shall not be considered a holiday for the purpose of these computations. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§80-1, 485A-606)

**§16-39-103 Fees.** (a) The following fees shall be submitted with an initial or renewal application, or notice filing:

- (1) The fee for filing a notice of transaction involving the offer or sale of a security by an issuer to an accredited investor shall be \$200;
- (2) The fee for filing a report of the value of the federal covered securities sold or offered under section 485A-302, HRS, shall be \$50;
- (3) The fee for an initial notice filing for investment company securities shall be \$200 per portfolio or series. The annual fee to renew such notice filing shall be \$50 per portfolio or series;
- (4) The notice filing fee for a transaction under the Securities Act, Regulation D, 17 CFR Section 230.505, shall be \$100;
- (5) The notice filing fee for a federal covered security issued under the Securities Act, Regulation D, 17 CFR Section 230.506, shall be \$100;
- (6) The fee for registration of securities by qualification shall be one tenth of one per cent of the aggregate offering price of the securities to be offered in the State with a minimum fee of \$250 and a maximum fee of \$2,500. The annual fee to renew a registration by qualification shall be \$250;
- (7) The application fee for registration of a broker-dealer shall be \$200. The annual fee to renew a broker-dealer's registration shall be \$200;
- (8) The application fee for registration of a securities agent shall be \$50. The annual fee to renew an agent's registration shall be \$50. The fee for a transfer of registration as an agent shall be \$50;



- (9) The application fee for registration of an investment adviser shall be \$100. The annual fee to renew an investment adviser's registration shall be \$100;
  - (10) The application fee for registration of an investment adviser representative shall be \$50. The annual fee to renew an investment adviser representative's registration shall be \$50;
  - (11) The notice filing fee for a federal covered investment adviser required to file a notice shall be \$100 per calendar year. The annual fee to renew a federal covered investment adviser's notice filing shall be \$100; and
  - (12) The filing fee for any exempt transaction granted under subchapter 2 shall be \$100.
- (b) The fee for copies of documents filed in the office of the commissioner shall be twenty-five cents per page. [Eff 6/30/08; comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§92-24, 92-28, 485A-302, 485A-304, 485A-406)

**§16-39-104 Forms.** (a) The following forms shall be used by persons submitting an initial or renewal application, or notice filing to the commissioner:

- |             |  |
|-------------|--|
| Form ADV:   | shall be used by an investment adviser to request registration or to renew a registration, and by a federal covered investment adviser to submit a required notice filing; |
| Form ADV-H: | shall be used by an investment adviser to request a temporary or continuing hardship exemption;  |
| Form ADV-W: | shall be used by an investment adviser to terminate a registration, or by a federal covered investment adviser to terminate a notice filing;                               |

Form BD: shall be used by a broker-dealer or issuer to request registration;

Form BD-W: shall be used by a broker-dealer or issuer to terminate a registration;

Form D: shall be used by issuers of securities to satisfy the requirements of section 16-39-203 or section 485A-202(15)(D), HRS;

Form NF: shall be used by an investment company to comply with the notice filing requirements under section 16-39-221;

Form U-1: shall be filed by an issuer seeking registration of its securities by qualification;

Form U-2: shall be used to satisfy any requirement under chapter 485A, HRS, that a consent to service of process be filed with the commissioner; provided that in lieu of filing a Form U-2, the commissioner shall accept an originally executed Form ADV, Form BD, or Form U-4 that has been filed with the commissioner or with the CRD;

Form U-2A: shall be used by any person required under chapter 485A, HRS, to file a corporate resolution with the department;

Form U-4: shall be used by an agent or investment adviser representative to request registration or to request a transfer of registration from one broker-dealer, issuer, investment adviser, or federal covered investment adviser to another;

Form U-5: shall be used to terminate the registration of an agent or investment adviser representative;

Form U-7: shall be used by issuers seeking registration of a SCOR offering.

Model Accredited

Investor Form: shall be used by an issuer offering or selling securities to accredited investors to submit a notice filing;

(b) Broker-dealers that are registered under the Securities Exchange Act may file Forms BD, BD-W, U-4, and U-5 with the commissioner through the CRD.

(c) Investment advisers and federal covered investment advisers may, to the extent permitted by the IARD, file Forms ADV, ADV-W, U-4, and U-5 with the commissioner through the CRD.

(d) Every applicant or registrant that has filed any of the forms listed in subsection (a) with the commissioner shall promptly file with the commissioner any and all amendments necessary to keep the information previously reported on the forms current and accurate. If the form being amended was filed with the commissioner through the CRD, any amendment to the form may also be filed through the CRD. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-606)

**§16-39-105 Action on documents submitted to the commissioner; extension.** (a) The commissioner shall accept or deny documents submitted to the commissioner within forty-five calendar days after the date the documents were submitted.

(b) An application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative shall become effective at noon on the forty-fifth day after a completed application is filed unless:

- (1) Otherwise provided by state or federal law; or
- (2) An earlier effective date is specified by rule or order.

(c) To be complete, the document shall consist of the appropriate form described in section 16-39-104, together with any additional documents or information and fees required under this chapter or chapter 485A, HRS, or requested by the commissioner.

(d) The commissioner shall notify an applicant within forty-five calendar days of an application being received if the application is not complete and shall provide the applicant a list of the documents, information, and fees that must be filed in order to have the application deemed complete. An applicant shall have an additional forty-five calendar days from the receipt of the commissioner's letter within which to complete the pending document. If the document has not been completed within this time, it may be denied by the commissioner pursuant to section 485A-412, HRS, or be withdrawn by the applicant. [Eff 6/30/08; comp                   ] (Auth: HRS §§26-9, 91-13.5, 485A-606) (Imp: HRS §91-13.5)

**§16-39-106 Fines and penalties.** Any fines and penalties imposed under chapter 485A, HRS, or this chapter shall be deposited into the compliance resolution fund. [Eff 6/30/08; comp                   ] (Auth: HRS §§26-9, 485A-606) (Imp: HRS §§485A-508, 485A-602, 485A-603, 485A-604)

## SUBCHAPTER 2

### EXEMPT TRANSACTIONS AND NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED SECURITIES

#### A. Exempt Transactions

**§16-39-201 Limitation on issuers and offerors.**

(a) Nothing in this subchapter shall relieve, or be construed as in any way relieving, issuers or persons acting on their behalf from the anti-fraud provisions of chapter 485A, HRS.

(b) In view of the objective of this subchapter and the purpose and policies underlying chapter 485A, HRS, the exemptions are not available to any issuer or persons acting on their behalf with respect to any transaction which, although in technical compliance with this subchapter, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in chapter 485A, HRS, or this chapter. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-202, 485A-203)

**§16-39-202 Exemptions.** (a) Any offer or sale of securities offered or sold in compliance with the Securities Act, Regulation D, 17 CFR sections 230.501, 230.502, 230.503, and 230.505 and complies with the conditions and limitations of this subchapter, shall be exempted under section 485A-203, HRS.

(b) This section shall not provide an exemption for any offer or sale of securities offered or sold in compliance with the Securities Act, Regulation D, 17 CFR section 230.504. [Eff 6/30/08; comp

] (Auth: HRS §§485A-203, 485A-606) (Imp: HRS §§485A-202, 485A-203)

**§16-39-203 Notice filing.** (a) For issuers offering or selling securities in compliance with the Securities Act, Regulation D, 17 CFR section 230.505, a notice filing shall be made no later than fifteen calendar days after the first sale is made in this State. The notice filing shall consist of:

- (1) One signed copy of the Form D currently updated, and the appendix thereto;

- (2) An executed consent to service of process (Form U-2); and
- (3) The filing fee set forth in section 16-39-103.

(b) Upon written request of the commissioner, the issuer shall provide copies of information furnished in tangible form, including by electronic transmission, by the issuer to offerees.

(c) Amendments. During the period of the offering, the issuer shall take steps necessary to ensure that all material information contained in the notice filing remains current and accurate. [Eff 6/30/08; comp ] (Auth: HRS §§485A-203, 485A-606) (Imp: HRS §§485A-202, 485A-203)

**§16-39-204 Application for residential cooperative corporations.** The information required for filing shall be as prescribed in the application form, together with other information as the commissioner may require. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-201, 485A-202)

**§16-39-205 Disqualification.** (a) Any person who is disqualified by the SEC from using any provision of the Securities Act, Regulation D, 17 CFR section 230.507, shall not qualify for any of the exemptions under this subchapter.

(b) Any disqualification caused by this section shall be automatically rescinded if the federal or state agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemptions be denied. [Eff 6/30/08; comp ] (Auth: HRS §§485A-203, 485A-606) (Imp: HRS §§485A-202, 485A-203)

B. Notice Filing [~~For~~] for Federal Covered Securities

**§16-39-220 Notice filing for investment company securities.** (a) Pursuant to section 485A-302, HRS, for a federal covered security that is issued by an investment company registered under the Investment Company Act, the notice filing shall include:

- (1) A Form NF or a copy of the issuer's federal registration statement;
- (2) A consent to service of process (Form U-2); and
- (3) The filing fee set forth in section 16-39-103.

(b) Except as otherwise provided in chapter 485A, HRS, and this chapter, a notice filing shall be effective commencing upon the later of its receipt by the commissioner or the effectiveness of the offering with the SEC, and continuing until two months after the issuer's fiscal year end. A notice filing may be renewed prior to its expiration by filing with the commissioner:

- (1) A current Form NF or a copy of the issuer's most recent federal registration statement; and
- (2) The renewal fee set forth in section 16-39-103.

(c) A renewed notice filing shall take effect upon the expiration of the previous notice filing.

(d) The initial notice filing by a unit investment trust shall be effective indefinitely.

[Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-302)

**§16-39-221 Notice filing for transactions under the Securities Act, Regulation D, 17 CFR section 230.506.** For a federal covered security issued under the Securities Act, Regulation D, 17 CFR section 230.506, a notice filing shall be filed with the

commissioner no later than fifteen calendar days after the first sale is made in this State. The notice filing shall consist of:

- (1) One copy of the Form D currently updated, and the appendix thereto;
- (2) A consent to service of process (Form U-2); and
- (3) The filing fee set forth in section 16-39-103. [Eff 6/30/08; comp ]  
(Auth: HRS §485A-606) (Imp: HRS §485A-302)

### SUBCHAPTER 3

#### REGISTRATION OF SECURITIES

##### A. Registration of Securities, Prospectus

**§16-39-301 Registration of securities.** (a) In addition to the requirements of section 485A-303, HRS, a registration statement to register securities by qualification shall contain the following:

- (1) A Form U-1 and accompanying documents (including subscription agreement);
- (2) Two copies of the prospectus, including financial statements;
- (3) All exhibits filed with the SEC in connection with the registration statements;
- (4) The filing fee set forth in section 16-39-103; and
- (5) Any additional information or documents requested by the commissioner.

(b) An application filed with the SEC under the Securities Act, Regulation A, 17 CFR sections 230.251 to 230.262, may be filed with the commissioner by qualification. Notwithstanding the requirements of the SEC, however, the prospectus or offering circular



used in connection with an offering of securities under Regulation A of the SEC shall contain the financial statements prescribed by section 485A-303(b), HRS. [Eff 6/30/08; comp ]  
(Auth: HRS §485A-606) (Imp: HRS §§485A-301, 485A-303, 485A-304)

**§16-39-302 Prospectus.** (a) The prospectus of any security that is subject to registration under section 485A-303, HRS, or this chapter may be printed, mimeographed, lithographed, or typewritten, or prepared by any similar process in clearly legible copies.

(b) Every subscription agreement concerning the registration of a security by qualification shall contain a statement by the purchaser that the purchaser has received a copy of the security's prospectus.

(c) Interstate offerings shall contain the information required by the application form together with the following:

- (1) How the public offering price was established;
- (2) Whether there has been a public market for the securities;
- (3) The terms and conditions of the escrow agreement; and
- (4) Business history of the officers and directors.

(d) Intrastate offerings shall contain the same information as interstate offerings, plus the following:

- (1) That the offering is only to bona fide residents of this State;
- (2) That during the public offering, no securities may be transferred to a nonresident of this State;
- (3) That in case of a sale to a nonresident, the issuer may rescind the sale and refund the purchase price; and

- (4) In an offering of interest-bearing securities, what reserves or sinking fund shall be provided to pay for the securities as they become due, or whether no reserves shall be provided.

(e) The prospectus shall be prepared in substantially the following form and shall contain the information required under chapter 485A, HRS, this chapter, and any additional information required by the commissioner. (The following specimen form has been prepared for use in connection with a speculative intrastate offering and may therefore be modified to the extent the provisions are inapplicable.)

- (1) Cover page:

"PROSPECTUS  
(Date)

(NAME OF ISSUER)  
(Address)

Incorporated under the laws of the State of  
Hawaii (Date) \_\_\_\_\_ Shares of Common Stock of  
the Par Value of \$ \_\_\_\_\_ Per Share.

	Offering Price	Sales Commissions	Net Proceeds To Issuer*
Per Share	\$ _____	\$ _____	\$ _____
Aggregate	\$ _____	\$ _____	\$ _____

\*Before deducting expenses estimated not to  
exceed \$ \_\_\_\_\_ to be borne by the issuer.

THE SECURITY(IES) DESCRIBED IN THIS PROSPECTUS  
ARE SPECULATIVE. NEITHER THIS PROSPECTUS NOR THE

SECURITIES DESCRIBED HEREIN HAVE BEEN APPROVED OR DISAPPROVED BY THE COMMISSIONER OF SECURITIES OF THE STATE OF HAWAII, NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. THIS OFFERING IS MADE ONLY TO BONA FIDE RESIDENTS OF THE STATE OF HAWAII.

To be sold by \_\_\_\_\_";

(2) Business.

- (A) State the history, showing capitalization, mergers, change of names, etc., general character and location of issuer's business, properties, branch offices, stores, plants, outlets, etc., and similar information concerning its predecessors, affiliates, and subsidiaries. There should also be a statement as to the length of time the issuer has been in business;
- (B) Describe the physical properties, equipment, claims, patents, or patent applications, etc., and nature of title or interest therein;
- (C) If the issuer leases its plant, office, or other physical properties, disclose briefly the terms of the lease and relationship of the lessor to any officer, director, promoter, or stockholder of the issuer;
- (D) State the nature of present or proposed products or services, the principal market therefor;
- (E) Set forth the general competitive conditions in the industry or business in which the issuer is, or proposes to be, engaged, and any particular risks or hazards to which it might be subjected; and

- (F) Describe the issuer's employee relations by setting forth the number of employees and whether any of them are covered by collective bargaining agreements and, if so, approximately how many are so covered, when the agreements expire, and whether collective bargaining is on a company or industry wide basis. Also describe whether the issuer has experienced any work stoppages in recent years;
- (3) Use of proceeds. Outline the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amount of funds to be raised from other sources to achieve the purposes stated; the sources of those funds; and, if a part of the proceeds is to be used to acquire property (including goodwill) other than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition;
- (4) Method of offering. If the securities are to be offered through a broker-dealer, state the name and address of the broker-dealer, with a statement of any material relationship between the issuer and the broker-dealer. State whether the securities are to be offered for cash only or whether the securities may be paid for in installments and, if so, the specific terms and conditions. If a minimum purchase is required, it should also be disclosed. State briefly the commission to be paid to

the broker-dealer, including cash, securities, contracts, options, or any other consideration. If the securities are to be sold by the issuer, it should also be stated that the offering shall be done by securities agents duly registered with the commissioner. If the proceeds of the offering are to be placed in escrow, state the terms and conditions of the escrow; and state the other terms prescribed by the commissioner for the certification by the escrow agent to the commissioner when the amount specified in the escrow agreement has been met in the specified time and the conditions whereby the funds shall be released to the subscribers by the escrow agent. State also that during the public offering, no securities may be transferred to a nonresident and that in case of a sale to a nonresident, the issuer shall rescind the sale and refund the purchase price;

- (5) Speculative features of the offering. Explain generally the speculative features of the offering and any special conditions that may affect the success or failure of the enterprise or the investor's interest therein. State how the public offering price was established and whether there has been a public market for the shares. In a speculative offering, the front cover shall contain a clear and conspicuous statement that the securities are speculative. If the officers, directors, or promoters are receiving or have received salaries, fees, or other compensation from the issuer, indicate the amounts, how paid, and services rendered;
- (6) Description of securities. Outline briefly as follows:
  - (A) In the case of shares, the par or stated value, if any; the rate of dividend, if fixed, whether cumulative

- or noncumulative and any restrictions on dividend payments; the preference, if any; and if convertible, the conversion rate; the restrictions, if any, on the transfer of the securities;
- (B) In the case of debt securities, the rate of interest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities; if the issue is redeemable before maturity, a brief statement of the redemption date or dates and price or prices; if payment of principal or interest is contingent, an indication of the contingency; a brief indication of the priority of the issue; and if convertible, the conversion rate; and
- (C) In the case of any other kind of security, appropriate information of a comparable character;
- (7) Management and control. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected. With respect to a promoter, if the issuer was organized within the previous three years, the information or records specified above, any amount paid to the promoter within that period or intended to

- be paid to the promoter, and the consideration for the payment;
- (8) Interests of management. Provide a description of all direct or indirect interests, by security holdings or otherwise, of each officer and director of the issuer and, if the issuer was organized within the last three years, of each promoter of the issuer:
    - (A) In the issuer or its affiliates; and
    - (B) In any material transactions within the past two years or in any material proposed transactions to which the issuer or any of its predecessors or affiliates was or is to be a party, stating the cost to those persons of any property or services for which payment by or for the account of the issuer has been or is to be made;
  - (9) Ownership. With respect to a person owning of record or owning beneficially, if known, ten per cent or more of the outstanding shares or any class or equity security of the issuer, the information specified in paragraph (7) other than the person's occupation;
  - (10) Options and warrants. A description of any stock options or other security options outstanding, or to be created in connection with the offering, including the names of the holders thereof, the cost thereof to the holders, the terms and conditions on which they may be exercised, and the price at which the securities may be acquired pursuant thereto;
  - (11) Litigation. A description of any pending litigation, action, or proceeding to which the issuer or any of its subsidiaries is a party or of which any of their property is the subject and that materially affects its business or assets, and any litigation,

- action, or proceeding known to be contemplated by governmental authorities;
- (12) Legal opinion. State the name and address of the attorney who has advised the issuer with respect to the legality of the offered securities, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;
- (13) Escrow provisions. If the officers, directors, promoters, or insiders have stock which is subject to escrow pursuant to section 485A-304(f), HRS, or subject to escrow pursuant to any state or federal statute or regulation, make a complete disclosure of the number of shares escrowed, names of persons escrowing the stock, where escrowed, and the terms and conditions of the escrow; and
- (14) Financial statements. Provide a balance sheet of the issuer at the close of the issuer's last fiscal year preceding the date of filing of the prospectus, and a profit and loss statement and analysis of surplus for the fiscal year ended at the date of the balance sheet, all certified by an independent public accountant; together with a balance sheet of the issuer as of a date within ninety days prior to the date of filing of the prospectus and a statement of profit and loss for the period from the close of the last preceding fiscal year to the date of the balance sheet, both verified by a duly authorized officer, or the equivalent, of the issuer or, if the issuer has been in existence for less than one year, a balance sheet of the issuer as of a date within ninety days prior to the date of filing and a statement of profit and loss for the period from the date of the issuer's



organization to the date of the balance sheet, both certified by an independent public accountant.

If consolidated financial statements are used, there should also be a financial statement of the issuer alone. If the issuer has not yet commenced business, there should be submitted in lieu of the statement of profit and loss a statement of receipts and disbursements certified to by an independent public accountant. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-304)

B. Statements ~~[Of]~~ of Policy Relating ~~[To]~~ to Registration ~~[Of]~~ of Securities

**§16-39-310 Registration of securities by qualification.** The commissioner may deny an application for registration of a security as being fraudulent or working or tending to work a fraud upon the purchaser, or may find that the enterprise or business of the issuer is based on unsound business principles, unless the requirements of chapter 485A, HRS, and this chapter are met or good cause is shown for an exception. [Eff 6/30/08; comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-311 Financial reports.** Financial statements required under chapter 485A, HRS, and this chapter shall be prepared, audited, and certified by independent certified public accountants or licensed independent public accountants in accordance with generally accepted accounting procedures and practices; provided that if a report contains exceptions of a material nature, it shall not be considered to be certified. [Eff 6/30/08;

comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-312 Maximum commissions and expenses.**

Compensation to broker-dealers in connection with the sale and promotion of a public offering, including selling expenses and allowances or reimbursement for items such as salaries, overrides, agent's commissions, clerical, administrative, printing, postage, advertising, and all other expenditures incurred, and anything of value accruing to the broker-dealer directly or indirectly, shall not exceed fifteen per cent of the total amount of the offering. [Eff 6/30/08; comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-313 Offering price.** In the case of an issuer which has been actually engaged in business or operation, the amount for which a security is being offered to the public should bear some reasonable relationship to:

- (1) Market value, if any;
- (2) Price-earnings ratio, as reflected by its financial statements covering an average three-year preceding period, or the shorter duration of experience or operation as may be applied; or
- (3) In the absence of an established or determinable market value or price-earnings ratio, the book value of the issuer may be taken into consideration in justifying or substantiating the reasonableness of the offering price. [Eff 6/30/08; comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-314 Compliance with Hawaii business registration laws.** No application of a Hawaii corporation, partnership, limited liability company, or other business entity for the registration of a security shall be accepted if the entity is not current in filing its annual reports as required by this State's business registration laws, and complete records as prescribed by this State's business registration laws shall be maintained at all times.  
[Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-304, 485A-606)

**§16-39-315 NASAA statements of policy for registration of securities.** The disclosure-related provisions of certain guidelines or statements of policy adopted by NASAA may be used by the commissioner for purposes of reviewing the adequacy of the disclosures required under this chapter and chapter 485A, HRS. The following "Statements of Policy and Guidelines" of NASAA are hereby adopted and incorporated by reference into this chapter:

- (1) "Uniform Disclosure Guidelines for Cover Legends" adopted on October 2, 2004, as amended;
- (2) "NASAA Guidelines Regarding Viatical Investments" adopted on October 1, 2002, as amended;
- (3) "Statement of Policy Regarding Corporate Securities Definitions" adopted on September 28, 1999, as amended;
- (4) "Statement of Policy Regarding the Impoundment of Proceeds" adopted on September 28, 1999, as amended;
- (5) "Statement of Policy Regarding Options and Warrants" adopted on September 28, 1999, as amended;
- (6) "Statement of Policy Regarding Promotional Securities" adopted on September 28, 1999, as amended;

- (7) "Statement of Policy Regarding Specificity in Use of Proceeds" adopted on September 28, 1999, as amended;
- (8) "Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Securities Holders" adopted on September 28, 1999, as amended;
- (9) "Statement of Policy Regarding Unsound Financial Condition" adopted on September 28, 1999, as amended;
- (10) "Statement of Policy Regarding Promoters' Equity Investment" adopted on April 27, 1997, as amended; and
- (11) "Statement of Policy Regarding Real Estate Investment Trusts" adopted on May 7, 2007, as amended. [Eff 6/30/08; comp ]  
(Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

C. Effectiveness [~~And~~] and Post-Effectiveness Requirements

**§16-39-330 Effectiveness.** When an application for the registration of securities has been declared effective by the commissioner, it shall be designated as a registration statement, and the offering may be commenced upon the issuance of a certificate of registration or notification of effectiveness. A registration statement that has become effective with the SEC under the Securities Act becomes effective in this State automatically at the moment of effectiveness with the SEC if no stop order or notice of deficiency has been entered. The applicant shall promptly advise the commissioner by telephone, fax, or electronically of the date and time of the securities' federal effectiveness. [Eff 6/30/08; comp ]  
(Auth: HRS §485A-606) (Imp: HRS §§485A-302, 485A-303, 485A-304)

**§16-39-331 Confirmations by issuer.** Every issuer selling its own securities in an intrastate offering, at or before completion of a transaction, shall give or send to each customer written confirmation, retaining copies thereof, concerning all sales of securities, and disclosing the:

- (1) Date the transaction occurred;
  - (2) Price and commission charged; and
  - (3) Name of the agent handling the transaction.
- [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-332 Amendments.** (a) If prior to or during the period of effectiveness any statement, document, or information contained in the registration statement or prospectus becomes materially inaccurate, incorrect, or misleading, or in the light of changes in circumstances, addendums are made necessary in order to present a full disclosure of material facts affecting the issuer's business or the offering, or if the commissioner requests additional data, information, or verification thereof, the registrant shall promptly file, and in no event later than fifteen days following the event, occurrence, discovery, or notice thereof necessitating the same, a correcting amendment.

(b) In the event an issuer amends its prospectus, the revised date together with the date of the prospectus shall be shown on the front cover, and the portion or portions of the prospectus being amended should also show the amended date. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-301, 485A-303, 485A-304)

**§16-39-333 Renewals.** A registration statement may be renewed not less than fifteen days prior to the

expiration date by filing a new prospectus containing information of a date not more than ninety days prior to the date of filing, together with the renewal fee of \$250. The front cover shall show the balance of the offering, the amount of the original registration, and the date the original registration became effective. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-302, 485A-303)

**§16-39-334 Withdrawal, termination, or completion.** (a) A request for withdrawal of a registration statement may be made before or after its effectiveness by written notification to the commissioner; provided that no request shall be granted during the pending of a stop order proceeding under section 485A-305, HRS, unless the commissioner finds that the stop order is not necessary in the public interest. Upon the granting of a request for withdrawal, no part of the registration fee shall be refunded.

(b) Notification of termination or completion of a registered offering shall be submitted to the commissioner within thirty calendar days after the termination or completion, and shall include the results of the offering. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-302, 485A-303, 485A-304, 485A-305)

#### D. Advertising [~~And~~] and Financial Reports

**§16-39-340 Advertising.** (a) Definition. For purposes of this section, "sales literature" means material published in connection with an offer, sale, or purchase of a security to or from the general public, including material published in electronic format, or designed for use, in a newspaper, magazine or other periodicals, radio, television, telephone solicitation or tape recording, videotaped display,

signs, billboards, motion pictures, telephone directories (other than routine listings), other public media and any other written communication distributed or made generally available to the public, electronically or otherwise including, but not limited to, prospectuses, pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of other sales literature or advertising to include publications.

(b) Filing requirement. Any sales literature used in connection with the offering of a security in this State shall be filed with the commissioner at least two business days prior to its proposed use; provided that the following materials shall be exempt from the filing requirements of this section: all advertising material previously filed with and cleared by the SEC or FINRA; all "tombstone" advertisements; and all advertisements relating to a federal covered security or to a security that is exempt from registration pursuant to section 485A-201 or 485A-202, HRS.

(c) Application of antifraud provisions. Sales literature used in any manner in connection with the offer, sale, or purchase of a security shall be subject to the provisions of sections 485A-501 and 485A-505, HRS, whether or not the sales literature is required to be filed pursuant to section 485A-504, HRS, or this section. Sales literature shall not contain any ambiguity, exaggeration, or other misstatement or omission of material fact that might confuse or mislead an investor.

(d) Prohibited disclosures. Unless specifically stating that the commissioner has not approved the merits of the security offering or the sales literature, no sales literature shall contain a reference to the commissioner unless such reference is specifically requested by the commissioner. [Eff 6/30/08; comp ] (Auth: HRS §§485A-504, 485A-606) (Imp: HRS §§485A-501, 485A-504, 485A-505, 485A-606)

**§16-39-341 Reports.** A copy of all financial reports sent or intended to be sent to security holders by an issuer of securities that is registered under chapter 485A, HRS, shall be filed with the commissioner upon request during the period of time that the issuer's registration statement is in effect. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-411, 485A-606)

E. Small Company Offerings Registration

**§16-39-350 Purpose.** The purpose of sections 16-39-350 to 16-39-355 is to encourage investment in small businesses, and provide a method of registration for small companies offering securities to the public. The commissioner recognizes that small issuers raising small amounts of money face special problems not faced by issuers raising larger amounts, and that standards appropriate to registrations of larger offerings may become unduly burdensome when applied to registrations of small offerings. The registration method offered by sections 16-39-350 to 16-39-355 is intended to reduce the costs and burdens of raising capital for small business and to maximize the amount of offering proceeds available to the issuer for investment in the business, without sacrificing investor protection. Issuers eligible for this method of registration shall use the SCOR registration form as the disclosure document for the offering. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-351 Application of this chapter to SCOR registrations.** (a) The provisions of subchapter 3 shall apply to SCOR registrations; provided that



section 16-39-311 relating to financial reports, and section 16-39-330 relating to SEC effective dates shall not apply.

(b) The commissioner reserves the right to apply this chapter (or any provision therein) to offerings under sections 16-39-350 to 16-39-355 if the commissioner determines that such application, even in the small business offering context, is necessary for the protection of investors. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-352 Availability.** (a) SCOR is intended to allow small companies to conduct limited offerings of securities. SCOR uses a simplified offering format designed to provide adequate disclosure to investors concerning the issuer, the security offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the SCOR format and will, therefore, be unable to utilize SCOR.

(b) The commissioner finds that SCOR is generally unsuitable for the following issuers and programs:

- (1) Holding companies, and companies whose principal purpose is owning stock in or supervising the management of other companies;
- (2) Portfolio companies, including but not limited to real estate investment trusts as defined in NASAA's "Statement of Policy Regarding Real Estate Investment Trusts" referenced in section 16-39-315(11);
- (3) Issuers with complex capital structures;
- (4) Commodity pools;
- (5) Equipment leasing programs;
- (6) A "blind pool" or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified; and
- (7) Real estate programs.

(c) SCOR registrations are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities.

(d) In addition, each of the following requirements shall be met:

- (1) The issuer shall be a corporation or centrally managed limited liability company organized under the law of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia, and have its principal place of business in one of the foregoing;
- (2) The issuer shall be required to engage in a business other than petroleum exploration or production or mining or other extractive industries;
- (3) The issuer shall not be a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person;
- (4) The offering price for common stock (and the exercise price, if the securities offered are options, warrants, or rights for common stock, and the conversion price, if the securities are convertible into common stock) shall be equal to or greater than one dollar per share. The offering price for common ownership interests in a limited liability company (and the exercise price, if the securities are options, warrants, or rights for common ownership interests, and the conversion price, if the securities are convertible into common ownership interests) shall be equal to or greater than one dollar per unit of interest;
- (5) The aggregate offering price of the securities offered (within or outside this State) shall not exceed \$1,000,000 less the aggregate offering price of all securities

sold within the twelve months before the start of and during the offering of the securities under the Securities Act, 17 CFR section 230.504, in reliance on any exemption under section 3(b) of the Securities Act, in reliance on the exemption under section 3(a)(11) of the Securities Act, or in violation of section 5(a) of the Securities Act;

- (6) Commissions, fees, or other remuneration for soliciting any prospective purchaser in connection with the offering in this State shall only be paid to persons who, if required to be registered or licensed, the issuer believes or has reason to believe are appropriately registered or licensed in this State; and

- (7) Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. If appropriate, a reconciliation note should be provided. If the issuer has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; provided that if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants or the Canadian equivalent:

- (A) The issuer shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailing, public

meetings, "cold call" telephone solicitation, or any other method directed toward the public;

- (B) The issuer has not been previously required under federal, state, provincial, or territorial securities laws to provide audited financial statements in connection with any sale of its securities;
- (C) The aggregate amount of all previous sales of securities by the issuer (exclusive of debt financing with banks and similar commercial lenders) shall not exceed U.S. \$1,000,000; and
- (D) The amount of the present offering does not exceed U.S. \$1,000,000.

(e) SCOR registration shall not be available to investment companies subject to the Investment Company Act, nor shall it be available to issuers subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act. [Eff 6/30/08; am and comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-353 Disqualification from use of SCOR registration.** (a) SCOR registration shall not be available for the security of any issuer if that issuer or any of its officers, directors, ten per cent shareholders, promoters or any selling agents of the security to be offered, or any officer, director, or partner of such selling agent:

- (1) Has filed an application for registration which is the subject of a currently effective registration stop order entered pursuant to any federal, state, or provincial securities law within five years prior to the filing of the SCOR registration application;
- (2) Has been convicted within five years prior to the filing of the SCOR registration

application of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit; including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

- (3) Is currently subject to any federal, state, or provincial administrative enforcement order or judgment entered by any state or provincial securities commissioner or the SEC within five years prior to the filing of the SCOR registration application;
- (4) Is subject to any federal, state, or provincial administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the SCOR registration application;
- (5) Is subject to any federal, state, or provincial administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities;
- (6) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily, or permanently restrains or enjoins such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or involving the making of any false filing with any state or with the SEC, entered within five years prior to the filing of the SCOR registration application; or
- (7) Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or

(b) The prohibitions of subsection (a) (1) through (3) and (a) (5) shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state or province in which the administrative order or judgment was entered against the person, or if the broker-dealer employing the person is licensed or registered in this State and the Form BD filed in this State discloses the order, conviction, judgment, or decree relating to the person.

**§16-39-354 Agreement by registrant on splits and dividends of stock or ownership interests.** By filing for SCOR registration in this State, the registrant agrees that it shall not split its common stock or common ownership interests, or declare a stock or

ownership interest dividend, for two years after the effective date of the registration. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-355 Documents to be filed for SCOR registration.** In addition to filing a properly completed SCOR form, an applicant for SCOR registration shall file the following exhibits with the commissioner:

- (1) Form of selling agency agreement;
- (2) The issuer's articles of incorporation, articles of organization, or other charter documents, and all amendments thereto;
- (3) The issuer's bylaws or operating agreement, as amended to date;
- (4) Copies of any resolutions by directors setting forth terms and provisions of capital stock to be issued or by managers or managing members setting forth terms and provisions of capital ownership interest to be issued;
- (5) Any indenture, form of note, or other contractual provision containing terms of notes or other debt, or of options, warrants, or rights to be offered;
- (6) Specimen of security or ownership interest certificate to be offered (including any legend restricting resale);
- (7) Consent to service of process accompanied by appropriate corporate or company resolution;
- (8) Copy of all advertising or other materials directed to or to be provided to investors in the offering;
- (9) Form of escrow agreement for the escrow of proceeds;
- (10) Consent to inclusion in the disclosure document of the accountant's report;

- (11) Consent to inclusion in the disclosure document of any tax adviser's opinion or description of tax consequences;
- (12) Consent to inclusion in the disclosure document of any evaluation of litigation or administrative action by counsel;
- (13) Form of any subscription agreement for the purchase of securities in this offering;
- (14) Opinion of an attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price shall be legally and validly issued, fully paid, and nonassessable and binding on the issuer in accordance with their terms; and
- (15) Agreement by the registrant that the registrant shall not split its common stock or common ownership interests, or declare a stock or ownership interest dividend, for two years after the effectiveness of the registration. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-303)

## SUBCHAPTER 4

REGISTRATION OF BROKER-DEALERS, AGENTS,  
INVESTMENT ADVISERS, AND INVESTMENT ADVISER  
REPRESENTATIVES

### A. Broker-Dealers

**§16-39-401 Registration; generally.** A person may be registered under chapter 485A, HRS, and this chapter if the commissioner finds that the applicant is qualified, has sufficient training and experience,



is of good repute, and otherwise satisfies the requirements of chapter 485A, HRS, and this chapter. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-401, 485A-406)

**§16-39-402 Eligibility requirements.** (a) An applicant, if a natural person, shall have attained the age of eighteen years.

(b) A broker-dealer that is a foreign business entity that intends to establish a branch office in this State shall, in addition to the requirements under this chapter and chapter 485A, HRS, comply with the requirements of this State's business registration laws, as applicable.

(c) An applicant, except an applicant that is registered as a broker or dealer under the Securities Exchange Act, shall have a minimum net capital of not less than \$5,000 and comply with the requirements of section 16-39-404(b).

(d) A partner or an officer of a registered broker-dealer or issuer may engage in the capacity of an agent only if that person has been duly registered as provided under this chapter and chapter 485A, HRS. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-401, 485A-406)

**§16-39-403 Application.** (a) An application for registration of a broker-dealer shall be filed on Form BD, which may be filed with the commissioner directly or through the CRD. If Form BD is filed with the commissioner directly, it shall be originally executed.

(b) The application shall be filed together with the following:

- (1) The application fee specified in section 16-39-103;
- (2) Evidence of compliance with all applicable requirements of section 16-39-402; and

- (3) Financial statements consisting of either:
  - (A) A balance sheet as of a date within thirty days of filing, verified by a duly authorized officer, or the equivalent, of the applicant and notarized, or if the applicant has been engaged in business one year or more preceding, an audited financial statement as of the last fiscal year, together with a balance sheet as of a date within thirty calendar days of filing, verified by a duly authorized officer, or the equivalent, of the applicant and notarized; or
  - (B) If the applicant is registered under the Securities Exchange Act, the applicant shall include with its application a copy of its most recent annual financial statement.
- (c) The commissioner may also require additional information regarding the applicant's previous history, record, and association, including without limitation the following:
  - (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
  - (2) The applicant's financial condition and history;
  - (3) Disclosure as to whether the broker-dealer, or any person employed by or associated in business with the broker-dealer, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the broker-dealer under section 485A-412, HRS; and
  - (4) Any other information that the commissioner deems necessary to establish the qualifications of the applicant.

(d) Additional exhibits or information not specifically required by the application may be submitted by the applicant.

(e) The commissioner may require the applicant to file additional information if the information is necessary for the commissioner to determine whether to approve or deny the application. In accordance with the provisions of section 16-39-105, any additional information requested by the commissioner shall be requested in writing within forty-five calendar days of the commissioner's receipt of the application.

[Eff 6/30/08; am and comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-406, 485A-410)

**§16-39-404 Financial requirements.** (a) Every registered broker-dealer shall file an annual report of condition within ninety calendar days following the end of the calendar or fiscal year adopted as follows:

- (1) Broker-dealers registered under the Securities Exchange Act shall file a copy of the annual financial report filed with the SEC; and
- (2) All other broker-dealers shall file audited financial statements that evidences the broker-dealer's compliance with the requirements of subsection (b).

(b) A broker-dealer that is subject to subsection (a)(2) shall have at all times a minimum net capital of not less than \$5,000. As used in this section, "net capital" shall mean net worth, or the difference between total assets and total liabilities or indebtedness, after adjustment to eliminate or revise assets of doubtful or uncertain value and to reflect true liabilities, in accordance with the following schedule:

- (1) Asset items not allowable:
  - (A) Furniture, fixtures, and equipment; and
  - (B) Intangible items, such as goodwill, prepaid preincorporation, or organizational expenses, etc.; and

- (2) Asset items to be adjusted or substantiated:
  - (A) Securities owned shall be adjusted to market value;
  - (B) Value of real estate shall be attested to by qualified and disinterested persons;
  - (C) Property in joint ownership shall be limited to applicant's interest therein; and
  - (D) Value of unsecured notes, accounts receivable, or advanced commissions due from an agent, officer, director, partner, or affiliate may be required by the commissioner to be substantiated by an opinion of a bank, finance company, or other lending institution satisfactory to the commissioner.

(c) Broker-dealers registered in this State, who are registered with the SEC and are members of FINRA, may satisfy the annual report requirements of this section by complying with the following:

- (1) The broker-dealer files its annual audited financial report with FINRA;
- (2) The broker-dealer's annual audited financial reports filed with FINRA are current;
- (3) The broker-dealer notifies the commissioner in writing within twenty-four hours if the broker-dealer's net capital fails to meet the minimum amount required under this section;
- (4) The broker-dealer shall provide the commissioner with financial information within one business day following a request for such information from the commissioner; and
- (5) The broker-dealer shall complete the "Waiver Eligibility Certification" form. [Eff 6/30/08; am and comp ] (Auth: HRS §§485A-406 485A-411, 485A-606) (Imp: HRS §§485A-406 485A-411, 485A-606)

**§16-39-405 Sales of securities at financial institutions.** No broker-dealer shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer complies initially and continuously with the following requirements:

- (1) Setting. Wherever practical, broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In those situations where there is insufficient space to allow separate areas, the broker-dealer has a heightened responsibility to distinguish its services from those of the financial institution. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its services.
- (2) Networking arrangements and program management. Networking arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking arrangements shall provide that supervisory personnel of the broker-dealer and representatives of state securities authorities, shall be permitted access to the financial institution's premises where the broker-dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its broker-dealer services. Management of the broker-dealer shall be responsible for ensuring that the networking arrangement clearly outlines the duties and

responsibilities of all parties, including those of the financial institution's personnel.

(3) Customer disclosure and written acknowledgment.

(A) At or prior to the time that a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer shall:

(i) Disclose, orally and in writing, that the securities purchased or sold in a transaction with the broker-dealer are: not insured by the FDIC; not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and subject to investment risks, including possible loss of the principal invested[-]; and

(ii) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by clause (i).

(B) If broker-dealer services include any written or oral representations concerning insurance coverage, other than FDIC insurance coverage, then clear and accurate written or oral explanations of the coverage must also be provided to the customers when the presentations are first made.

(4) Communications with the public.

(A) All of the broker-dealer's confirmations and account statements shall indicate clearly that the broker-

dealer services are provided by the broker-dealer.

- (B) Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer, or that are distributed by the broker-dealer on the premises of a financial institution, shall disclose that the securities: are not insured by the FDIC; are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and are subject to investment risks, including possible loss of the principal invested. The shorter, logo format described in subparagraph (D) may be used to provide these disclosures.
- (C) Recommendations by a broker-dealer concerning non deposit investment products with a name similar to that of a financial institution shall only occur pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.
- (D) The following shorter, logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, automated teller machine ("ATM") screens, billboards, signs, posters and brochures, to comply with the requirements of subparagraph (B); provided that such disclosures are displayed in a conspicuous manner:
  - (i) Not FDIC insured;
  - (ii) No bank guarantee; and
  - (iii) May lose value.

- (E) As long as the omission of the disclosures required by subparagraph (B) would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, such disclosures are not required with respect to messages contained in:
  - (i) Radio broadcasts of thirty seconds or less;
  - (ii) Electronic signs, including billboard-type signs that are electronic, time, and temperature signs and ticker tape signs, but excluding messages contained in such media as television, on-line computer services, or ATMs; and
  - (iii) Signs, such as banners and posters, when used only as location indicators.
- (5) Notification of termination. The broker-dealer shall promptly notify the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer. [Eff 6/30/08; am and comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §485A-406)

**§16-39-406 Books and records.** Every broker-dealer registered or required to be registered under chapter 485A, HRS, and this chapter shall prepare and maintain the books and records as described in the Securities Exchange Act, 17 CFR sections 240.17a-3 and 240.17a-4. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-411)



**§16-39-407 Post-effective requirements; registration of successor broker-dealer.** (a) Every registrant shall promptly notify the commissioner of any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in its last prior application, by filing a correcting amendment at the time of occurrence or discovery of the changes. Changes that shall be reported include but are not limited to the following:

- (1) Change in firm name, ownership, management, or control of a broker-dealer;
- (2) A change in any of its partners, officers, or persons in similar positions;
- (3) Change in its business address, or the creation or termination of a branch office in this State;
- (4) Change in type of business entity, general plan, or character of broker-dealer's business, method of operation or type of securities in which it is dealing or trading;
- (5) Material adverse change in financial condition, insolvency, dissolution or liquidation, or impairment of working capital, or noncompliance with the minimum net capital requirements provided in sections 16-39-402(c) and 16-39-404(b);
- (6) Termination of business or discontinuance of those activities as a broker-dealer or agent; and
- (7) The commencement of any proceeding or action that is required to be disclosed pursuant to the disciplinary questions on Form BD, including but not limited to, filing of a criminal charge or civil action against a registrant or a partner or officer in which a fraudulent, dishonest, or unethical act is alleged, or a violation of a securities law or any aspect of the securities business is involved, entry of a court or administrative order or proceeding against a registrant to deny, suspend, or revoke a registration, or

threatening to do so, or to enjoin it from engaging in or continuing any conduct or practice in the securities business, or to impose a fine, suspension, or expulsion from FINRA.

(b) Registration of successor broker-dealer. In the event that a new broker-dealer becomes the successor and continues the business of a broker-dealer registered pursuant to chapter 485A, HRS, and this chapter, the registration of the predecessor broker-dealer shall be deemed to remain effective as the registration of the successor broker-dealer only if the successor broker-dealer, within thirty days after such succession, files an application for registration on Form BD, and the predecessor broker-dealer files a notice of withdrawal from registration on Form BD-W.

- (1) The registration of the predecessor broker-dealer shall cease to be effective at such time as the application for registration on Form BD filed by the successor broker-dealer becomes effective; and
- (2) Notwithstanding any other provision of this section, if a new broker-dealer becomes the successor and continues the business of a registered broker-dealer, and the succession is based solely on a change in the predecessor broker-dealer's date or state of incorporation, form of organization, or composition of a partnership, the successor broker-dealer may, within thirty days after the succession, amend the registration of the predecessor broker-dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor broker-dealer and adopted by the successor broker-dealer.  
[Eff 6/30/08; comp ] (Auth:  
HRS §485A-606) (Imp: HRS §485A-407)

**§16-39-408 Expiration, renewal, termination of registration.** (a) All registrations shall automatically expire on December 31 of each year (unless sooner terminated in accordance with chapter 485A, HRS, and this chapter) and shall be renewed as provided in this section. A broker-dealer or issuer shall be responsible for renewing the registration of its agents at the time the broker-dealer or issuer renews its registration. A member of FINRA shall renew its registration with the commissioner by filing the renewal documents and fees through the CRD. All other broker-dealers and issuers shall renew their registration by annually filing, not earlier than November 1 or later than December 1 of the current registration year, an originally executed copy of page one of Form BD together with:

- (1) All amendments to Form BD that have previously not been filed with the commissioner;
- (2) A list of all agents of the broker-dealer that are renewing their registrations for the upcoming calendar year;
- (3) A copy of all amendments to Form U-4 of all such agents if such amendments have not been previously filed with the commissioner;
- (4) A Form U-5 on each registered agent of the broker-dealer who is not renewing its agent registration; and
- (5) A renewal fee as set forth in section 16-39-103 for the broker-dealer and for each agent renewing a registration.

(b) An application for renewal registration shall not be considered filed until the required fee and all required submissions have been received by the commissioner.

(c) Where registrations are permitted to expire on December 31 without the filing of a renewal application, a subsequent application shall be considered in all respects as an initial application.

(d) Registration may be terminated prior to the expiration date by filing a Form BD-W with the commissioner or through the CRD. Termination of the

broker-dealer's registration for any reason shall automatically terminate the registration of each registered agent of the broker-dealer. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-406, 485A-408, 485A-409, 485A-410)

#### B. Agents

**§16-39-420 Registration; generally.** A person may be registered as a securities agent under chapter 485A, HRS, and this chapter if the commissioner finds that the person is of good repute and otherwise satisfies the requirements of chapter 485A, HRS, and this chapter. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-402, 485A-406)

**§16-39-421 Eligibility requirements.** (a) An applicant, if a natural person, shall have attained the age of eighteen years.

(b) A broker-dealer or issuer shall submit an application with the commissioner to register an agent. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-402, 485A-406, 485A-410)

**§16-39-422 Application.** (a) An application for registration of an agent shall be filed on Form U-4, which shall be filed with the commissioner directly or through the CRD. If the broker-dealer is not registered through the CRD, an originally executed Form U-4 and fees shall be filed with the commissioner directly.

(b) The application shall be filed together with the following:

(1) The application fee set forth in section 16-39-103; and

(2) Evidence of compliance with section 16-39-421.

(c) The commissioner may also require additional information regarding the applicant's history, record, and association including without limitation the following:

(1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(2) The applicant's financial condition and history;

(3) Disclosure as to whether the agent or any person associated in business with the agent is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the agent under section 16-39-470 or chapter 485A, HRS; and

(4) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

(d) All documents submitted to the commissioner shall be approved and registration shall become effective at noon on the forty-fifth calendar day after the submission of a completed application unless otherwise provided by state or federal law or unless an earlier effective date is specified by the commissioner.

(e) An agent's application that has been on file for a period of sixty calendar days with no attempt to comply with any notice of deficiency may be denied by the commissioner or withdrawn. The commissioner shall provide written notification of the denial to the broker-dealer or issuer with which the applicant is affiliated. If the application was filed through the CRD, the notification may be provided through the CRD.  
[Eff 6/30/08; comp ] (Auth: HRS

§§485A-402, 485A-606) (Imp: HRS §§485A-402, 485A-406, 485A-410)

**§16-39-423 Examination requirements. (a)**

Unless specifically exempt, every applicant for registration as a securities agent shall be required to pass a written examination that tests the applicant's knowledge of the securities business.

(b) The examination requirement of subsection (a) shall be deemed satisfied upon evidence to the commissioner that the applicant has passed an examination administered by FINRA that is appropriate for the type of business that will be conducted by the agent and FINRA's Uniform Securities Agent State Law Examination.

(c) An applicant who has not been registered in any jurisdiction for a period of two consecutive years immediately preceding the date of the application shall be required to comply with the examination requirements of this chapter.

(d) Notwithstanding any other provision to the contrary, the commissioner may by order waive the examination requirement if the commissioner determines that the examination is not necessary or appropriate in the public interest or for the protection of investors. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-412, 485A-606) (Imp: HRS §§485A-402, 485A-406)

**§16-39-424 Post-effective requirements. (a)**

Every applicant and registrant shall promptly file with the commissioner any and all amendments necessary to keep the information previously reported on the applicant's or registrant's Form U-4 current and accurate. If the Form U-4 being amended was filed with the commissioner through the CRD, any amendment to the form may also be filed through the CRD.

(b) Upon the receipt of an amendment, the commissioner may request additional information from the applicant or registrant to determine whether the applicant's application should be denied or the registrant's registration should be suspended or revoked. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-411)

**§16-39-425 Expiration, renewal, termination of registration.** (a) All registrations shall automatically expire on December 31 of each year (unless sooner terminated in accordance with chapter 485A, HRS, and this chapter) and shall be renewed as provided in this section.

(b) A broker-dealer or issuer shall be responsible for renewing the registration of its agents at the time the broker-dealer or issuer renews its registration.

(c) An application for renewal registration shall not be considered filed until the broker-dealer or issuer submits the following:

- (1) The renewal fee set forth in section 16-39-103; and
- (2) A copy of all amendments to Form U-4 of all such agents if the amendments have not been previously filed with the commissioner.

(d) An agent's registration may be terminated at any time prior to its expiration date by either the broker-dealer or issuer employing the agent or by the agent filing a Form U-5 with the commissioner directly or through the CRD. Termination shall be effective when the notice of termination is received by the commissioner unless another date is indicated on the Form U-5.

(e) An agent's registration shall not be transferred. When an agent terminates an affiliation with the broker-dealer or issuer with whom the agent is registered, and wishes to be employed by another broker-dealer or issuer, a notice of termination shall be filed with the commissioner. The agent may then





to be filed with the commissioner pursuant to chapter 485A, HRS, and this chapter, shall be filed electronically with and transmitted to the IARD. The following additional conditions relate to these electronic filings:

- (1) Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through the IARD, a duly authorized officer, or the equivalent, of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing;
- (2) When filed. Solely for purposes of a filing made through the IARD, a document is considered filed with the commissioner when all fees are received and the filing is accepted by the IARD on behalf of the State.

(e) Electronic filings. The electronic filing of any particular document and the collection of related processing fees shall not be required until the IARD provides for receipt of such filings and fees, and the commissioner provides at least thirty calendar days notice that electronic filing is available. Any documents or fees required to be filed with the commissioner that are not permitted to be filed with or cannot be accepted by the IARD shall be filed directly with the commissioner.

(f) Hardship exemptions. Notwithstanding subsections (d) and (e), there shall be two types of hardship exemptions from the requirements to make electronic filings:

- (1) Temporary hardship exemption.
  - (A) Investment advisers registered or required to be registered under the Investment Advisers Act who experience unanticipated technical difficulties

that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically;

- (B) To request a temporary hardship exemption, the investment adviser shall:
    - (i) File Form ADV-H in paper format with the commissioner where the investment adviser's principal place of business is located, no later than one business day after the filing (that is the subject of the Form ADV-H) was due; and
    - (ii) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven business days after the filing was due;
  - (C) Effective date - upon filing. The temporary hardship exemption shall be deemed effective upon receipt by the commissioner of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the commissioner; and
- (2) Continuing hardship exemption.
- (A) Criteria for exemption. A continuing hardship exemption may be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome;
  - (B) To apply for a continuing hardship exemption, the investment adviser shall:
    - (i) File Form ADV-H in paper format with the commissioner at least twenty business days before a filing is due; and

- (ii) If a filing is due to more than one commissioner, the Form ADV-H shall be filed with the commissioner where the investment adviser's principal place of business is located;
- (C) Effective date - upon approval. The continuing hardship exemption shall be deemed effective upon approval by the commissioner. The time period of the exemption shall not exceed one year after the date on which the Form ADV-H is filed. If the commissioner approves the application, the investment adviser shall, no later than five business days after the exemption approval date, submit filings to the IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

The decision to grant or deny a request for a hardship exemption shall be made by the commissioner or authority of the state in which the investment adviser's principal place of business is located.

[Eff 6/30/08; comp ] (Auth: HRS §§ 485A-406, 485A-606) (Imp: HRS §§485A-403, 485A-406)

**§16-39-431 Notice filing for federal covered investment advisers.** (a) A federal covered investment adviser may transact business in this State upon submitting to the commissioner a notice filing and notice filing fee as set forth in section 16-39-103, unless otherwise exempt pursuant to section 485A-405, HRS. The notice filing and notice filing fee may be filed with the commissioner through the IARD.

(b) The notice filing shall consist of the federal covered investment adviser's current Form ADV on file with the SEC. The notice filing shall be effective upon receipt and shall expire December 31 of

each year. A notice filing may be renewed prior to December 31 by either:

- (1) Filing with the commissioner:
  - (A) A copy of page one of the federal covered investment adviser's most recent Form ADV;
  - (B) A copy of Item 2 of Part 1A of the federal covered investment adviser's most recent Form ADV;
  - (C) Any amendments to Form ADV that have not been previously filed with the commissioner;
  - (D) A list containing the name and social security number or the IARD number of each investment adviser representative of the adviser who is renewing its registration for the coming notice filing period together with any amendments to the investment adviser representative's Form U-4 that have not been previously filed with the commissioner;
  - (E) A Form U-5 for each registered investment adviser representative who is not renewing its registration for the upcoming notice filing period; and
  - (F) A renewal fee as specified in section 16-39-103, to cover the renewal of the federal covered investment adviser's notice filing and the registration of each of its representatives who is renewing its registration; or
- (2) Filing a renewal and renewal fees through the IARD. Any investment adviser that elects to renew its notice filing through the IARD shall be required to file directly with the commissioner any information listed in paragraph (1)(D) and (E) that have not been filed through the IARD together with any fees due under paragraph (1)(F) that have not been paid through the IARD. [Eff

6/30/08; comp ] (Auth: HRS  
§485A-606) (Imp: HRS §485A-405)

**§16-39-432 Eligibility requirements.** (a) An applicant, if a natural person, shall have attained the age of eighteen years.

(b) A partner, officer, manager, representative, or employee of a registered investment adviser may render investment advisory services only if the person meets all the requirements of and has been duly registered as an investment adviser or investment adviser representative, as provided by section 485A-404, HRS, and this chapter.

(c) A corporation, partnership, limited liability company, sole proprietorship, or other unincorporated association whose partners, officers, managers, representatives, or employees render investment advisory services as defined in section 485A-403, HRS, shall comply with registration procedures as provided by section 485A-406, HRS, and this chapter, unless otherwise exempted.

(d) An individual applying to be registered as an investment adviser shall take and pass a written examination, prescribed by the commissioner, under section 16-39-438.

(e) An applicant shall have at all times, the minimum net worth, as defined in section 16-39-433. An applicant that maintains its principal place of business in a state other than this State shall not be required to comply with the minimum net worth requirement of this section; provided that the applicant is registered in the state where it maintains its principal place of business and is in compliance with that state's net capital or net worth requirements, if any.

(f) Except as otherwise expressly provided in this subchapter, an applicant who has custody or discretionary authority over client funds or securities shall obtain a surety bond as set forth in section 16-39-434.

(g) A foreign corporation, partnership, or limited liability company intending to establish a branch office in this State shall comply with the requirements of this State's business registration laws, as applicable. [Eff 6/30/08; comp ]  
(Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-403, 485A-406)

**§16-39-433 Financial requirements.** (a) An investment adviser registered or required to be registered, who does not have custody of client funds or securities, and who does not have discretionary authority over client funds or securities, shall maintain a minimum net worth of \$5,000 at all times.

(b) An investment adviser registered or required to be registered, who has custody of client funds or securities shall maintain a minimum net worth of \$35,000 at all times except:

- (1) Investment advisers that have custody solely due to their authority to deduct fees from client accounts and comply with the terms described in section 16-39-436 and related books and records shall only be required to maintain a minimum net worth of \$5,000 at all times; or
- (2) Investment advisers to pooled investment vehicles that have custody solely due to the capacity in which they act in advising pooled investment vehicles and comply with the terms described in section 16-39-436 and related books and records shall only be required to maintain a minimum net worth of \$5,000 at all times.

(c) An investment adviser, registered or required to be registered, who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, shall maintain a minimum net worth of \$10,000 at all times.

(d) Unless otherwise exempted, as a condition of the right to transact business in this State, every

investment adviser registered or required to be registered shall notify the commissioner if the adviser's net worth is less than the minimum required by the close of business on the next business day. After transmitting the notice, each investment adviser shall file a report with the commissioner of its financial condition by the close of business on the next business day, including the following:

- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds or securities that are not segregated;
- (3) A computation of the aggregate amount of client ledger debit balances; and
- (4) A statement as to the number of client accounts.

(e) For purposes of this chapter, the term "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles computed in accordance with the following:

- (1) Securities owned shall be adjusted to market value;
- (2) The value of real estate shall be attested to by qualified and disinterested persons; and
- (3) Property in joint ownership shall be limited to the applicant's interest therein.

(f) For purposes of this chapter, "net worth" shall not include the following as assets:

- (1) Prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles);
- (2) Deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense and all other intangible assets;
- (3) Homes, home furnishings, [~~automobile(s),~~] automobiles, and any other personal items not readily marketable in the case of an individual;
- (4) Advances or loans to stockholders and officers in the case of a corporation;

- (5) Advances or loans to partners in the case of a partnership; or
- (6) Advances or loans to managers or members in the case of a limited liability company.
- (g) For purposes of this section, custody shall be defined as provided in section 16-39-436.
- (h) For purposes of this section, an investment adviser shall not be deemed to be exercising discretion when the investment adviser places trade orders with a broker-dealer pursuant to a third-party trading agreement if:
  - (1) The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;
  - (2) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and
  - (3) A third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.
- (i) The commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.
- (j) Every investment adviser that has its principal place of business in a state other than this State shall be required to maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided that the investment adviser is licensed in such state and is in compliance with such state's minimum net worth requirements, if any. [Eff



6/30/08; am and comp ] (Auth: HRS  
§§485A-406, 485A-411, 485A-606) (Imp: HRS §§485A-  
406, 485A-411)

**§16-39-434 Bonding requirements for certain investment advisers.** (a) Any investment adviser bond required under this chapter and chapter 485A, HRS, shall be issued by a surety company qualified to do business in this State with the State as obligee, and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

(1) Every investment adviser registered or required to be registered under this chapter and chapter 485A, HRS, having custody of or discretionary authority over client funds or securities shall be bonded in the amount of \$50,000.

(2) Every investment adviser registered or required to be registered under this chapter and chapter 485A, HRS, who has custody of or discretionary authority over client funds or securities and who does not meet the minimum net worth requirements prescribed in section 16-39-433 shall be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000.

(b) For purposes of this section, "custody" shall be as defined in section 16-39-436.

(c) An investment adviser that has its principal place of business in a state other than this State shall be exempt from the requirements of subsection

(a), provided that the investment adviser is registered as an investment adviser in the state where the investment adviser has its principal place of business and is in compliance with such state's bonding requirements. [Eff 6/30/08; comp ]  
(Auth: HRS §§485A-411, 485A-606) (Imp: HRS §485A-411)

**§16-39-435 Application.** (a) Except as permitted by section 16 39 430(f), an application for registration shall be filed on Form ADV through the IARD and shall contain the information requested therein concerning the applicant's identification, qualification, business association, history, experience, and financial condition.

(b) The application shall be filed together with the following:

- (1) The application fee set forth in section 16-39-103;
- (2) Evidence of compliance with all applicable requirements of section 16-39-432(d) to (g);
- (3) Financial statements consisting of either:

- (A) A balance sheet as of a date within thirty calendar days of filing, verified by a duly authorized officer, or the equivalent, of the applicant and notarized, or if the applicant has been engaged in business one year or more preceding, an audited financial statement as of the last fiscal year, together with a balance sheet as of a date within thirty calendar days of filing, verified by a duly authorized officer, or the equivalent, of the applicant and notarized. However, if the applicant does not have custody or discretionary authority over client funds, the adviser need only file financial statements verified by a duly authorized officer, or the equivalent, of the applicant and notarized; or
- (B) If the investment adviser maintains its principal place of business in a state other than this State, and if the investment adviser is registered in the other state and is in compliance with the other state's financial reporting requirements, if any, a copy of the

adviser's most recent financial statement filed with the state where the adviser maintains its principal place of business; and

- (4) Proof that the applicant, if an individual, has complied with the examination requirement provided in section 16-39-438, or otherwise qualifies for exemption from the examination as specified in section 16 39-438.

(c) The commissioner may also require additional information regarding the applicant's previous history, record, and association, including without limitation the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
- (2) The applicant's financial condition and history;
- (3) Disclosure as to whether the investment adviser, or any person employed by or associated in business with the investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser under section 485A-412, HRS; and
- (4) Any other information that the commissioner deems necessary to establish the applicant's qualifications.

(d) Additional exhibits or information not specifically required by the application may be submitted by the applicant.

(e) The commissioner may require the applicant to file additional information if such information is necessary for the commissioner to determine whether to approve or deny the application. In accordance with the provisions of section 16-39-105, any additional information requested by the commissioner shall be

requested by the commissioner in writing within forty-five calendar days of receipt of the application.

(f) An application for initial registration shall not be considered filed until the required fee and all required submissions have been received by the commissioner. [Eff 6/30/08; comp ]  
(Auth: HRS §§485A-403, 485A-406, 485A-410, 485A-411, 485A-606) (Imp: HRS §§485A-403, 485A-406, 485A-410, 485A-411)

**§16-39-436 Custody of client funds or securities by investment advisers.** (a) Safekeeping required.

It shall be unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser that is registered or required to be registered to have custody of client funds or securities unless:

- (1) Notice to commissioner. The investment adviser shall notify the commissioner promptly in writing that the investment adviser has or may have custody. Such notification is also required to be given on Form ADV through the IARD;
- (2) Qualified custodian. A qualified custodian maintains those funds and securities:
  - (A) In a separate account for each client under that client's name; or
  - (B) In accounts that contain only the client's funds and securities, under the investment adviser's name as agent or trustee for the client;
- (3) Notice to clients. If the investment adviser opens an account with a qualified custodian on the client's behalf, either under the client's name or under the investment adviser's name as agent, the investment adviser shall notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly

when the account is opened and following any changes to this information;

(4) Account statements shall be sent to clients, either:

(A) By a qualified custodian. The investment adviser shall have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of the investment adviser's clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

(B) By the investment adviser.

(i) The investment adviser shall send an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period;

(ii) An independent certified public accountant shall verify all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the investment adviser and that is irregular from year to year, and shall file a copy of the auditors report and financial statements with the commissioner within

- thirty calendar days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination, and
- (iii) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, shall notify the commissioner of the discrepancies within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the commissioner;
  - (C) Special rule for limited partnerships and limited liability companies. If the investment adviser is a general partner of a limited partnership or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under paragraph (4) shall be sent to each limited partner or member, or other beneficial owner or their independent representative;
  - (5) Independent representatives. A client may designate an independent representative to receive, on the client's behalf, notices and account statements as required under paragraphs (3) and (4);
  - (6) Direct fee deduction. An investment adviser who has custody by having the authority to deduct fees directly deducted from client accounts shall provide the following safeguards:

- (A) Written authorization. The investment adviser shall have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;
- (B) Notice of fee deduction. Each time a fee is directly deducted from a client account, the investment adviser shall concurrently:
  - (i) Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and
  - (ii) Send the client an invoice itemizing the fee. Such itemization shall include the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee;
- (C) Notice of safeguards. The investment adviser shall notify the commissioner in writing that the investment adviser intends to use the safeguards required under this section. Such notification shall be given on Form ADV[~~-~~]1;
- (D) Waiver of net worth, bonding and audited financial statement requirements. An investment adviser having custody solely because the investment adviser meets the definition of custody as defined under this section and who complies with the safekeeping requirements in paragraphs (1) through (6) shall not be required to meet the financial requirements for an investment adviser with custody as provided in section 16-39-433, the bonding requirement set forth in section 16-39-434, and the audited

financial statement requirement set forth in section 16-39-437;

- (7) Pooled investments. An investment adviser to pooled investment vehicles who has custody and who does not meet the exception provided in subsection (b)(3) shall, in addition to the safeguards set forth in paragraphs (1) through (5), comply with the following:
  - (A) Engage an independent party. Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled investment accounts;
  - (B) Review of fees. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal, and the method of calculation such that the independent party can:
    - (i) Determine that the payment is in accordance with the pooled investment vehicle standards (generally, the partnership agreement or membership agreement); and
    - (ii) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser;
  - (C) For purposes of this section, an "independent party" means a person that:
    - (i) Is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment;
    - (ii) Does not control and is not controlled by, and is not under common control with the investment adviser; and



- (iii) Does not have, and has not had within the past two years, a material business relationship with the investment adviser;
- (D) Notice of safeguards. The investment adviser shall notify the commissioner in writing that the investment adviser intends to use the safeguards required under this section. The notification shall be given on Form ADV;
- (E) Waiver of net worth, bonding and audited financial statement requirements. An investment adviser having custody solely because the investment adviser meets the definition of custody as defined under this section and who complies with the safekeeping requirements in paragraphs (1) through (5) and (7) shall not be required to meet the financial requirements for an investment adviser with custody as provided in section 16-39-433, the bonding requirement set forth in section 16-39-434, and the audited financial statement requirement set forth in section 16-39-437;
- (8) Investment adviser or investment adviser representative as trustee. When a trust retains an investment adviser, investment adviser representative, or employee, director, or owner of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser shall:
  - (A) Notify the commissioner in writing that the investment adviser intends to use the safeguards required under this section. The notification shall be given on Form ADV;
  - (B) Send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee

(other than the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser); or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated;

- (C) Enter into a written agreement with a qualified custodian which specifies:
  - (i) That the qualified custodian shall not deliver trust securities to the investment adviser, any investment adviser representative or employee, director, or owner of the investment adviser; nor transmit any funds to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, except that the qualified custodian may pay trustee fees to the trustee and investment management or advisory fees to investment adviser; provided that:
    - (A) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co trustee (other than the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser); or a defined

- beneficiary of the trust  
has authorized the  
qualified custodian in  
writing to pay those fees;
- (B) The statements for those  
fees show the amount of the  
fees for the trustee and,  
in the case of statements  
for investment management  
or advisory fees, show the  
value of the trust assets  
on which the fee is based  
and the manner in which the  
fee was calculated; and
- (C) The qualified custodian  
agrees to send to the  
grantor of the trust, the  
attorneys for a  
testamentary trust, the co-  
trustee (other than the  
investment adviser,  
investment adviser  
representative, or  
employee, director or owner  
of the investment adviser);  
or a defined beneficiary of  
the trust, at least  
quarterly, a statement of  
all disbursements from the  
account of the trust,  
including the amount of  
investment management fees  
paid to the investment  
adviser and the amount of  
trustees' fees paid to the  
trustee;
- (ii) Except as otherwise set forth  
below in subparagraph  
(8)(C)(ii)(A), the qualified  
custodian may transfer funds or  
securities, or both, of the  
trust only upon the direction of

the trustee (who may be the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser); or a defined beneficiary of the trust, shall designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

- (A) A trust company, bank trust department or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;
- (B) The named grantors or to the named beneficiaries of the trust;
- (C) A third person who is independent of the investment adviser with respect to payment of the fees or charges of the third person including, but not limited to: attorney's, accountant's, or qualified custodian's fees for the trust; and taxes, interest,

(D) Third persons independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or

(D) Waiver of net worth, bonding and audited financial statement requirements. An investment adviser having custody solely because the investment adviser meets the definition of custody as defined under this section and who complies with the safekeeping requirements in paragraphs (1) through (5) and (8) shall not be required to meet the financial requirements for an investment adviser with custody as provided in section 16-39-433, the bonding requirement set forth in section 16 39-434 and the audited financial statement requirement set forth in section 16-39-437.

(1) Shares of mutual funds. With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with the requirements of subsection (a);

- (2) Certain privately offered securities.
  - (A) An investment adviser shall not be required to comply with the requirements of subsection (a) with respect to securities that are:
    - (i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;
    - (ii) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and
    - (iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.
  - (B) Notwithstanding subparagraph (A), the provisions of paragraph (2) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in paragraph (3) and the investment adviser notifies the commissioner in writing that the investment adviser intends to provide audited financial statements, as described above. The notification shall be given on Form ADV;
- (3) Limited partnerships subject to annual audit. An investment adviser shall not be required to comply with paragraph (4) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within one hundred twenty calendar days after the end of its fiscal year. The investment adviser shall also notify the commissioner in

writing that the investment adviser intends to employ the use of the audit safeguards described above. The notification is required to be given on Form ADV;

- (4) Registered investment companies. The investment adviser shall not be required to comply with this section with respect to the account of an investment company registered under the Investment Company Act;
- (5) Beneficial trusts. The investment adviser shall not be required to comply with safekeeping requirements of subsection (a) or the net worth requirement set forth in section 16-39-433 and the bonding requirements set forth in section 16 39 434 if the investment adviser has custody solely because the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser is a trustee for a beneficial trust, if all of the following conditions are met for each trust:
  - (A) The beneficial owner of the trust is a parent, grandparent, spouse, sibling, child, or grandchild of the trustee. These relationships shall include "step" relationships.
  - (B) For each account under subparagraph (A), the investment adviser shall comply with the following:
    - (i) The investment adviser shall provide a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection (a) and the reasons why the investment adviser will not be complying with those requirements;
    - (ii) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under clause (i); and

- (iii) The investment adviser maintains a copy of both documents described in clauses (i) and (ii) until the account is closed or the investment adviser is no longer the trustee;
- (6) Any investment adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in subsection (c) shall first obtain approval from the commissioner and shall comply with all of the applicable safekeeping provisions under subsection (a), including taking responsibility for those provisions that are designated to be performed by a qualified custodian.
- (c) Definitions. For purposes of this section:
  - "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them. Custody includes:
    - (1) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;
    - (2) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and
    - (3) Any capacity (such as general partner or a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or investment adviser's supervised person legal ownership of or access to client funds or securities;

Receipt of checks or securities drawn by clients and made payable to unrelated third parties shall not meet the definition of custody if forwarded to the third party within twenty-four hours of receipt and the adviser maintains the records required under section 16-39-442;



- "Independent representative" means a person who:
- (1) Acts as an agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obligated to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;
  - (2) Does not control, is not controlled by, and is not under common control with the investment adviser; and
  - (3) Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

"Qualified custodian" means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the adviser in the previous two years:

- (1) A bank or savings association that has deposits insured by the FDIC under the Federal Deposit Insurance Act;
  - (2) A registered broker-dealer holding the client assets in customer accounts;
  - (3) A registered futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and
  - (4) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.
- [Eff 6/30/08; am and comp ] (Auth: HRS §§485A-411, 485A-606) (Imp: HRS §485A-411)

**§16-39-437 Annual financial reporting**

**requirements.** (a) Every registered investment adviser shall file an annual report within ninety calendar days following the end of the investment adviser's fiscal year as follows:

- (1) An investment adviser that maintains its principal place of business in this State shall file audited financial statements; however, if an investment adviser does not have custody or discretionary authority over client funds, the investment adviser shall file financial statements verified by a duly authorized officer, or the equivalent, of the investment adviser and notarized. Any statement that does not adequately reflect the applicant's true financial picture shall not be accepted; and
  - (2) An investment adviser that maintains its principal place of business in a state other than this State shall file with the commissioner a copy of the most recent financial report or statement, if any, that the investment adviser has filed with the securities commissioner in the state in which it maintains its principal place of business. An investment adviser that maintains its principal place of business in a state other than this State but that is not registered in the state in which it maintains its principal place of business or is not in compliance with that state's financial reporting requirements, if any, shall be required to file with the commissioner financial statements that comply with the requirements of paragraph (1).
- (b) Except as otherwise provided in subsection (d), each registered investment adviser shall have at

all times a minimum net worth specified in section 16-39-433.

(c) To ensure the investment adviser's compliance with section 16-39-433 and this section, the commissioner may require that the value of unsecured notes, accounts receivable, or advanced commissions due from an agent, officer, director, partner, or affiliate be substantiated by an opinion of a bank, finance company, or other lending institution satisfactory to the commissioner.

(d) The provisions of subsections (b) and (c) shall not apply to an investment adviser that maintains its principal place of business in another state; provided that the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's net worth or net capital requirements, if any. [Eff 6/30/08; am and comp ]  
(Auth: HRS §§ 485A-411, 485A-606) (Imp: HRS §485A-411)

**§16-39-438 Examination requirements. (a)**

Examination requirements. Except as otherwise provided in this chapter, an individual applying to be registered as an investment adviser shall provide the commissioner with proof of obtaining a passing examination score or scores as follows:

- (1) The Uniform Investment Adviser Law Examination (Series 65 examination); or
- (2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(b) An individual who has not been registered in any jurisdiction for a period of two consecutive years immediately preceding the date of the application shall be required to comply with the examination requirements of this section.

(c) Any investment adviser who fails to renew his or her registration for two or more consecutive

years, or who has not registered in any other jurisdiction for two or more consecutive years since passing a qualifying examination approved by the commissioner, shall be required to apply as a new applicant and comply with the examination requirements of this section.

(d) Exemptions.

- (1) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on July 1, 2008 shall not be required to satisfy the examination requirements for continued registration; provided that the commissioner may require additional examinations for any individual found to have violated any state or federal securities law;
- (2) Waivers. The examination requirement shall not apply to an individual who currently holds one of the following professional designations:
  - (A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
  - (B) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
  - (C) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
  - (D) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
  - (E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or
  - (F) Such other professional designation as the commissioner may by rule or order recognize.

(e) Notwithstanding any other provision to the contrary, the commissioner, by order, may waive the examination requirement if the commissioner determines

that the examination is not necessary or appropriate in the public interest or for the protection of investors. [Eff 6/30/08; comp ] (Auth: HRS §§485A-403, 485A-406, 485A-412, 485A-606) (Imp: HRS §§485A-403, 485A-406)

**§16-39-439 Disclosure statements.** Unless waived by the commissioner, every investment adviser that is registered or required to be registered under chapter 485A, HRS, and this chapter shall furnish each advisory client and prospective advisory client with a written disclosure statement that complies with the provisions of the Investment Advisers Act, 17 CFR section 275.204-3, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act. The delivery and updating of the disclosure statement required by this section shall be done in accordance with the requirements of Investment Advisers Act, 17 CFR section 275.204-3. [Eff 6/30/08; comp ] (Auth: HRS §§485A-403, 485A-406, 485A-411, 485A-502, 485A-606) (Imp: HRS §§485A-403, 485A-406, 485A-411, 485A-502)

**§16-39-440 Post-effective requirements.** (a) Every registrant shall promptly notify the commissioner of any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in its last prior Form ADV by filing a correcting amendment on Form ADV. Changes to be reported shall include, but are not limited to, the following:

- (1) Change in firm name, ownership, management, or control of an investment adviser;
- (2) Change in any of its partners, officers, or persons in similar positions;

- (3) Change in its business address, or the creation or termination of a branch office in this State;
- (4) Change in type of entity, general plan, or character of the investment adviser's business, method of operation, or type of securities in which it is dealing or trading;
- (5) Material adverse change in financial condition, insolvency, dissolution, or liquidation, or impairment of working capital, or noncompliance with the minimum net worth or bond requirements hereinabove provided; and
- (6) The filing of any disciplinary proceeding that is required to be disclosed on Form ADV, including but not limited to, a criminal charge or civil action against a registrant or a partner, officer, or employee who acts as an investment adviser in which a fraudulent, dishonest, or unethical act is alleged, or a violation of a securities law or any aspect of the securities business is involved or entry of a court or administrative order or proceeding against a registrant to deny, suspend, or revoke a registration, or threatening to do so, or to enjoin it from engaging in or continuing any conduct or practice in the securities business, or to impose a fine, suspension, or expulsion from FINRA.

(b) Registration of successor to registered investment adviser. In the event that a new investment adviser becomes the successor and continues the business of an investment adviser registered pursuant to section 16-39-430, the registration of the predecessor investment adviser shall be deemed to remain effective as the registration of the successor investment adviser if the successor investment adviser, within thirty calendar days after such succession, files an application for registration on

Form ADV, and the predecessor investment adviser files a notice of withdrawal from registration on Form ADV-W.

- (1) The registration of the predecessor investment adviser shall cease to be effective at such time as the application for registration on Form ADV filed by the successor investment adviser becomes effective; and
- (2) Notwithstanding any other provision of this section, if an investment adviser succeeds to and continues the business of a registered investment adviser, and the succession is based solely on a change in the predecessor investment adviser's date or state of incorporation, form of organization, or composition of a partnership, the successor investment adviser shall, within thirty calendar days after the succession, amend the registration of the predecessor investment adviser on Form ADV to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor investment adviser and adopted by the successor investment adviser. [Eff 6/30/08; comp ] (Auth: HRS §§485A-411, 485A-606) (Imp: HRS §§ 485A-407, 485A-409, 485A-411)

**§16-39-441 Expiration, renewal, termination of registration.** (a) All registrations shall automatically expire on December 31 of each year (unless sooner terminated in accordance with chapter 485A, HRS, and this chapter) and shall be renewed as provided in this section. An investment adviser shall be responsible for renewing the registration of its investment adviser representatives at the time the investment adviser renews its registration. An investment adviser shall renew its registration with

the commissioner by filing the renewal documents and fees through the IARD. The renewal documents shall include:

- (1) All amendments to Form ADV and Form U-4 that have not previously been filed with the commissioner;
- (2) The renewal fee as set forth in section 16-39-103 for the investment adviser and for each investment adviser representative renewing a registration.

(b) An application for renewal registration shall not be considered filed until the required fee and all required submissions have been received by the commissioner.

(c) A copy of all amendments to Form ADV that have previously been filed shall be submitted directly to the commissioner.

(d) Where registrations are permitted to expire on December 31 without the filing of a renewal application, a subsequent application shall be considered in all respects as an initial application.

(e) Registration may be terminated prior to the expiration date by filing a Form ADV-W with the commissioner or through the IARD. Termination of the investment adviser's registration for any reason shall automatically terminate the registration of each registered investment adviser representative of the investment adviser. [Eff 6/30/08; comp

] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-406, 485A-409, 485A-606)

**§16-39-442 Books and records.** (a) Every investment adviser registered or required to be registered under chapter 485A, HRS, and this chapter shall make and keep true, accurate, and current books and records in compliance with the Investment Advisers Act, 17 CFR section 275.204-2. In addition, investment advisers who have custody, as that term is defined in section 16-39-436, of client funds or



securities, shall keep all records and evidence of compliance required by section 16-39-436.

(b) An investment adviser subject to subsection (a), before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commissioner in writing of the exact address where such books and records shall be maintained during such period.

(c) To the extent that the SEC promulgates changes to the rules of the Investment Advisers Act referenced in subsection (a), investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the commissioner for violation of this section to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(d) Every investment adviser that has its principal place of business in a state other than this State shall be exempt from the requirements of this section; provided the investment adviser is licensed in such state and is in compliance with the state's recordkeeping requirements. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-411, 485A-606) (Imp: §485A-411)

#### D. Investment Adviser Representatives

**§16-39-450 Registration; generally.** A person may be registered as an investment adviser representative under chapter 485A, HRS, if the commissioner finds that the applicant is of good repute and otherwise satisfies the requirements of chapter 485A, HRS, and this chapter. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-404, 485A-406)

**§16-39-451 Eligibility requirements.** (a) An applicant, if a natural person, shall have attained the age of eighteen years.

(b) An investment adviser shall submit an application with the commissioner to register an investment adviser representative. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-404, 485A-406)

**§16-39-452 Application.** (a) An application for registration of an investment adviser representative shall be filed on Form U-4 through the IARD.

(b) The application shall be filed together with the following:

- (1) The application fee set forth in section 16-39-103; and
- (2) Evidence of compliance with section 16-39-451.

(c) The commissioner may also require additional information regarding the applicant's history, record, and association, including without limitation the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (2) The applicant's financial condition and history;
- (3) Disclosure as to whether the investment adviser representative or any person associated in business with the investment adviser representative is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the agent under section 16-39-470 or chapter 485A, HRS; and

(4) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

(d) All documents submitted to the commissioner shall be approved and registration shall become effective at noon on the forty-fifth calendar day after the submission of a completed application unless otherwise provided by State or federal law or unless an earlier effective date is specified by the commissioner.

(e) An investment adviser representative's application that has been on file for a period of sixty calendar days with no attempt to comply with any notice of deficiency may be denied by the commissioner or withdrawn. The commissioner shall provide written notification of the denial to the investment adviser with which the applicant is affiliated. If the application was filed through the IARD, the notification may be provided through the IARD.

(f) The termination of any investment adviser's registration for any reason shall automatically terminate the registration of all investment adviser representatives registered thereunder.

(g) When an investment adviser representative ceases the activities of an investment adviser representative, or the investment adviser representative otherwise becomes ineligible to be registered, a notice to terminate the registration shall be filed with the commissioner on Form U-5 by either the investment adviser representative or the investment adviser with whom the investment adviser representative is registered. The termination of the registration shall be effective upon the commissioner's receipt of such form unless another date is indicated on the Form U-5. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-406, 485A-408, 485A-409)

**§16-39-453 Examination requirements.** (a) Unless specifically exempt, every applicant for

registration as an investment adviser representative shall provide the commissioner with proof of obtaining a passing score or scores on the following examinations:

- (1) The Uniform Investment Adviser Law Examination (Series 65 examination); or
- (2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(b) An applicant who has not been registered in any jurisdiction for a period of two consecutive years immediately preceding the date of the application shall be required to comply with the examination requirements of this section.

(c) Any investment adviser representative who fails to renew his or her registration for two or more consecutive years, or who has not registered for two or more consecutive years since passing a qualifying examination as approved by the commissioner, shall be required to apply as a new applicant and comply with the examination requirements of this section.

(d) Exemptions.

- (1) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on July 1, 2008 shall not be required to satisfy the examination requirements for continued registration; provided that the commissioner may require additional examinations for any individual found to have violated any state or federal securities law.
- (2) Waivers. The examination requirement shall not apply to an individual who currently holds one of the following professional designations:
  - (A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

- (B) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- (C) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
- (D) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
- (E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or
- (F) Such other professional designation as the commissioner may by rule or order recognize.

(e) Notwithstanding any other provision to the contrary, the commissioner, by order, may waive the examination requirement if the commissioner determines that the examination is not necessary or appropriate in the public interest or for the protection of investors. [Eff 6/30/08; comp ] (Auth: HRS §§485A-404, 485A-406, 485A-412, 485A-606) (Imp: HRS §§485A-404, 485A-406)

**§16-39-454 Post-effective requirements.** (a)

Every applicant and every registrant shall promptly file with the commissioner any and all amendments necessary to keep the information previously reported on the applicant's or registrant's Form U-4 current and accurate. If the Form U-4 being amended was filed with the commissioner through the CRD or IARD, any amendment to the Form U-4 may also be filed through the CRD or IARD.

(b) Upon the receipt of the amendment, the commissioner may request additional information from the applicant or registrant to determine whether the applicant's application should be denied, or the registrant's registration should be suspended or revoked. [Eff 6/30/08; comp ] (Auth:

HRS §§485A-411, 485A-606) (Imp: HRS §§485A-404, 485A-409, 485A-411)

**§16-39-454.5 Continuing education requirements.**

(a) Investment adviser representative continuing education. Every investment adviser representative registered under chapter 485A, HRS, must complete the following IAR continuing education requirements each Reporting Period:

- (1) IAR Ethics and Professional Responsibility Requirement. An investment adviser representative must complete six Credits of IAR Regulatory and Ethics Content offered by an Authorized Provider, with at least three Credits covering the topic of ethics; and
- (2) IAR Products and Practice Requirement. An investment adviser representative must complete six Credits of IAR Products and Practice Content offered by an Authorized Provider.

(b) Agent of FINRA-registered broker-dealer compliance. An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with the subrule (a)(2) IAR Products and Practice Requirement for each applicable Reporting Period so long as the FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

- (1) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards;
- (2) The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry; and

- (3) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(c) Credentialing organization continuing education compliance. Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under section 16-39-453 complies with subsection (a)(1) and (a)(2) provided all of the following are true:

- (1) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant Reporting Period;
- (2) The credits of continuing education completed during the relevant Reporting Period by the investment adviser representative are mandatory to maintain the credential; and
- (3) The continuing education content provided by the credentialing organization during the relevant Reporting Period is Approved IAR Continuing Education Content.

(d) IAR continuing education reporting. Every investment adviser representative is responsible for ensuring that the Authorized Provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.

(e) No carry-forward. An investment adviser representative who completes Credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess credits to a subsequent Reporting Period.

(f) Failure to complete or report. An investment adviser representative who fails to comply with this rule by the end of a Reporting Period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required IAR continuing education Credits for all Reporting Periods as

required by this rule. An investment adviser representative who is CE inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

(g) Discretionary waiver by the Commissioner. The Commissioner may, in the Commissioner's discretion, waive any requirements of this rule.

(h) Home state. An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's Home State is considered to be in compliance with this rule provided that both of the following are true:

(1) The investment adviser representative's Home State has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Education; and

(2) The investment adviser representative is in compliance with the Home State's investment adviser representative continuing education requirements.

(i) Unregistered periods. An investment adviser representative who was previously registered under the Act and became unregistered must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by section 16-39-453 in connection with the subsequent application for registration.

(j) Definitions. As used in this section: "Act" means the Hawaii Uniform Securities Act (2008), codified at Chapter 485A, of the Hawaii Revised Statutes.

"Approved IAR Continuing Education Content" means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make



up the educational program provided to an investment adviser representative under this rule.

"Authorized Provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this rule.

"Credit" means a unit that has been designated by NASAA or its designee as at least fifty minutes of educational instruction.

"FINRA" means the Financial Industry Regulatory Authority.

"Home State" means the state in which the investment adviser representative has its principal office and place of business.

"IAR Ethics and Professional Responsibility Content" means Approved IAR Continuing Education Content that addresses an investment adviser representative's ethical and regulatory obligations.

"IAR Products and Practice Content" means Approved IAR Continuing Education Content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

"Investment adviser representative" or "IAR" means an individual who meets the definition of "investment adviser representative" under the Act and an individual who meets the definition of "investment adviser representative" under section 485A-102, HRS.

"NASAA" means the North American Securities Administrators Association or a committee designated by its Board of Directors.

"Reporting Period" means one twelve-month period as determined by NASAA. An investment adviser representative's initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is registered or required to be registered with this state. [Eff and comp ] (Auth: HRS §§485A-406, 485A-411, 485A-606) (Imp: HRS §§485A-406, 485A-411, 485A-606)

**§16-39-455 Expiration, renewal, termination of registration.** (a) All registrations shall automatically expire on December 31 of each year (unless sooner terminated in accordance with chapter 485A, HRS, and this chapter) and shall be renewed as provided in this section.

(b) An investment adviser shall be responsible for renewing the registration of its investment adviser representatives at the time the investment adviser renews its registration.

(c) An application for renewal registration shall not be considered filed until the investment adviser submits the following:

- (1) The renewal fee set forth in section 16-39-103; and
- (2) A copy of all amendments to Form U-4 of all such investment adviser representatives if such amendments have not been previously filed with the commissioner.

(d) An investment adviser representative's registration may be terminated at any time prior to its expiration date by the investment adviser employing the investment adviser representative or by the investment adviser representative by filing a Form U-5 with the commissioner directly or through the IARD. Termination shall be effective when the notice of termination is received by the commissioner unless another date is indicated on the Form U-5.

(e) An investment adviser representative's registration shall not be transferred. When an investment adviser representative terminates an affiliation with the investment adviser with whom the investment adviser representative is registered, and wishes to be employed by another investment adviser, a notice of termination shall be filed with the commissioner. The investment adviser representative may then reapply for registration with another investment adviser by complying with the requirements of this subchapter.

(f) The termination of any investment adviser's registration for any reason shall automatically

terminate the registration of all agents registered thereunder.

(g) When an investment adviser representative ceases the activities of an investment adviser representative, or the investment adviser representative otherwise becomes ineligible to be registered, a notice to terminate the registration shall be filed with the commissioner on Form U-5 by either the investment adviser representative, or the investment adviser with whom the investment adviser representative is registered. The termination of the registration shall be effective upon the commissioner's receipt of such form unless another date is indicated on the Form U-5. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §485A-406, 485A-409, 485A-606)

E. Denial ~~[Of]~~ of Application; Suspension ~~[And]~~ and Revocation ~~[Of]~~ of Registration ~~[Of]~~ of Broker-Dealers, Agents, Investment Advisers, ~~[And]~~ and Investment Adviser Representatives

**§16-39-470 Denial; suspension and revocation.**

(a) A proceeding to deny an application for registration, or to suspend or revoke the effectiveness of a registration may be instituted by the commissioner if the action is in the public interest, reasonable grounds exist that the applicant or registrant has violated or failed to comply with any provision of chapter 485A, HRS, or this chapter, or the applicant or registrant has demonstrated its unworthiness to transact the business of a broker-dealer, agent, investment adviser, or investment adviser representative.

(b) Without in any way limiting the generality thereof, for the purposes of section 485A-412(d)(14), HRS, any of the following shall demonstrate an applicant's or registrant's unworthiness to transact the business of a broker-dealer or agent:

- (1) Delivery delays. Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or both;
- (2) Churning. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
- (3) Unsuitable recommendations. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer or agent;
- (4) Unauthorized transactions. Executing a transaction on behalf of a customer without authorization to do so;
- (5) Discretionary authority. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the executing of orders, or both;
- (6) Margin accounts. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;
- (7) Segregation of client securities. Failing to segregate customers' free securities or securities held in safekeeping;
- (8) Hypothecating customer securities. Hypothecating a customer's securities

without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the SEC;

- (9) Unreasonable price, commission. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security, or receiving an unreasonable commission or profit;
- (10) Prospectus delivery. Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;
- (11) Unreasonable fees. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;
- (12) Offer to ~~[buy/sell]~~ buy or sell at stated price. Offering to buy from or sell to any person any security at a stated price unless the broker-dealer or agent is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;
- (13) Sales at the market. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer or agent knows or has reasonable grounds to believe that a market for the security exists other than that made, created, or

controlled by the broker-dealer or agent, or by any person for whom one is acting or with whom one is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer or agent;

- (14) Manipulative, deceptive, or fraudulent practices. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not limited to~~[+]~~:

(A) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(B) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided that nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(C) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security of others;

- (15) Loss guarantees. Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or agent, or in any securities transaction effected by the broker-dealer or agent, or in any securities transaction effected by the broker-dealer or agent with or for such customer;
- (16) Bona fide price reports. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer or agent believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer or agent believes that such quotation represents a bona fide bid for, or offer of, such security;
- (17) Deceptive or misleading advertising. Using any advertising or sales presentation in any manner that is deceptive or misleading. An example would be the distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure;
- (18) Disclosure of control. Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such

control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

- (19) Bona fide distribution. Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution; whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;
- (20) Customer communication. Failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint from a customer;
- (21) Loans [~~to/from~~] to or from customers. Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer;
- (22) Unrecorded transactions. Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;
- (23) Fictitious accounts. Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;
- (24) [~~Profit/loss~~] Profit or loss sharing. Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;



- (25) Splitting commissions. Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;
- (26) Unsolicited transactions. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited;
- (27) Compliance with the rules of self-regulatory organizations. Failing to comply with any applicable provision of the Conduct Rules and any other Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC;
- (28) Failure to cooperate. Failing to cooperate with, or providing false or incomplete information to, the commissioner in connection with any investigation under this chapter or chapter 485A, HRS;
- (29) Statement of account for OTC securities. Failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain for any month in which activity has occurred in a customer's account, but in no event less than every three months; provided that this paragraph shall apply only if the firm has been a market maker in the security at any time during the period for which the monthly or quarterly statement is issued;
- (30) Credit to customer. Extending credit to a customer in violation of the Securities Exchange Act or the regulations of the Federal Reserve Board;

- (31) Fee disclosures. Charging a fee based on the activity, value, or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided, and any consequence of late payment or non-payment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least sixty calendar days prior to the effective date of the fee;
- (32) Business disclosures. Failing to accurately describe or disclose, in any advertising or other promotional materials (including business cards, stationery or signs) relating to an agent's business, the identity of the broker-dealer or issuer with whom the agent is associated or the nature of the securities services offered by the agent;
- (33) Boiler room tactics. Engaging or aiding in high pressure tactics in connection with the solicitation of a sale or purchase of a security by means of an intensive telephone, e-mail, or fax campaign, or unsolicited calls to persons not known by, nor having an account with, the agent or broker-dealer represented by the agent, whereby the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his or her investment needs and objectives;
- (34) Protection of non-public information. Failing to protect the security and confidentiality of the non-public personal information of any client;
- (35) Minimum capital requirements. Operating a securities business while being unable to meet current liabilities, or violating any rule or order relating to minimum capital, bond, record-keeping and reporting requirements, or provision concerning use,

- commingling, or hypothecation of a customer's funds or securities;
- (36) Outside business activity. Any agent associated with a broker-dealer registered under chapter 485A, HRS, and this chapter shall not engage in business activities, for which the agent receives compensation either directly or indirectly, outside the scope of the agent's regular employment unless the agent has provided prior written notice to his employing firm;
  - (37) Dual agency. Failing to disclose a dual agency capacity;
  - (38) Other terms or conditions. Effecting transactions upon terms and conditions other than those stated per confirmations; or
  - (39) False, misleading, deceptive, exaggerated, or flamboyant representations. Making false, misleading, deceptive, exaggerated, or flamboyant representations or predictions in the solicitation or sale of a security. Examples of this include without limitation misrepresenting:
    - (A) That the security shall be resold or repurchased;
    - (B) That the security shall be listed or traded on an exchange or established market;
    - (C) That the security shall result in an assured, immediate or extensive increase in value, future market price, or return on investment;
    - (D) With respect to the issuer's financial condition, anticipated earnings, potential growth, or success; or
    - (E) That there is a guarantee against risk or loss.

This subsection is not intended to be all-inclusive, and thus, acts or practices not enumerated in this subsection may also be deemed to demonstrate unworthiness to transact the business of broker-dealer or agent. Engaging in

other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension, or revocation of registration.

(c) Without in any way limiting the generality thereof, for the purposes of section 485A-412, HRS, any of the following shall demonstrate an applicant's or registrant's unworthiness to transact the business of an investment adviser or investment adviser representative:

- (1) Unsuitable recommendation. Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;
- (2) Discretionary authority. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction place pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;
- (3) Churning. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account in light of the fact that an investment adviser or an

investment adviser representative in such situations can directly benefit from the number of securities transactions effected in a client's account. This paragraph appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account";

- (4) Unauthorized transactions. Placing an order to purchase or sell a security for the account of a client without authority to do so;
- (5) Unauthorized third-party trade. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;
- (6) Loans from clients. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;
- (7) Loans to clients. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;
- (8) Misrepresentations concerning advisory services. Misrepresenting to any advisory client or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

- (9) Advisory report prepared by another. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact; provided that this prohibition shall not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service;
- (10) Unreasonable advisory fees. Charging a client an unreasonable advisory fee;
- (11) Conflict of interest. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser, or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
  - (A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
  - (B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;
- (12) Guaranteeing specific results. Guaranteeing a client that a specific result will be achieved (gain or loss) with advice that will be rendered;
- (13) Advertising. Publishing, circulating, or distributing any advertisement which does not comply with the Investment Advisers Act, 17 CFR section 275-206(4)-1;
- (14) Disclosure of private information. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

- (15) Action contrary to section 16-39-435.  
Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of section 16-39-435;
- (16) Advisory contract disclosure. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;
- (17) Protection of non-public information.  
Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204A of the Investment Advisers Act;
- (18) Advisory contract to comply with federal law. Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act; provided that this provision shall apply to all advisers and investment adviser representatives registered or required to be registered under chapter 485A, HRS, and this chapter, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant

to section 203(b) of the Investment Advisers Act;

- (19) Waiver of state or federal law prohibited. To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of chapter 485A, HRS, this chapter, or the Investment Advisers Act;
- (20) Fraudulent, deceptive, or manipulative acts. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions of section 206(4) of the Investment Advisers Act, notwithstanding the fact that such investment adviser or investment adviser representative is not registered or required to be registered under section 203 of the Investment Advisers Act;
- (21) Third party conduct. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of chapter 485A, HRS, and this chapter;
- (22) Disclosure of material facts. Failing to disclose to any client or prospective client all material facts that may influence the client or prospective client's ability to make an informed decision;
- (23) Compliance with exchange or SRO rules. Failing to complying with any rule of a national securities exchange or self-regulatory organization approved by the SEC;
- (24) Failure to cooperate. Failing to cooperate with, or providing false or incomplete information to, the commissioner in connection with any investigation under chapter 485A, HRS, or this chapter;
- (25) Outside business activity. Any investment adviser representative associated with an investment adviser registered under chapter 485A, HRS, and this chapter, shall not



engage in business activities, for which the investment adviser representative receives compensation either directly or indirectly, outside the scope of the investment adviser representative's regular employment unless the investment adviser representative has provided prior written notice to the investment adviser representative's employing firm;

- (26) Client communication. Failing or refusing to furnish a client, upon reasonable request, information to which the client is entitled, or to respond to a formal written demand or complaint from the client;
- (27) Inside information. In connection with the offer, purchase, or sale of a security leading a client to believe that the investment adviser or investment adviser representative is in possession of material, non-public information that would affect the value of the security;
- (28) Unreasonable delay. Causing unreasonable delay or failure to execute orders, liquidate customer's accounts, or in making delivery of securities purchased or remittances (or credits) for securities sold; or
- (29) Unlicensed broker-dealer. Placing an order through an unlicensed broker-dealer or agent which the investment adviser should have known was unlicensed.

This subsection is not intended to be all inclusive, and thus, acts or practices not enumerated in this subsection may also be deemed to demonstrate unworthiness to transact the business of investment adviser or investment adviser representative. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced in this section shall apply to

investment advisers, investment adviser representatives, and federal covered investment advisers to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). [Eff 6/30/08; comp ]  
(Auth: HRS §485A-606) (Imp: HRS §485A-412)

## SUBCHAPTER 5

### FRAUDULENT PRACTICES OF BROKER-DEALERS, BROKER-DEALER AGENTS, AND AGENTS OF AN ISSUER

**§16-39-501 Fraudulent practices of broker-dealers, broker-dealer agents, and agents of an issuer.** The purpose of this section is to identify practices in the securities business that are generally associated with schemes to manipulate. A broker-dealer, broker-dealer agent, or agent of the issuer who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business that operates or would operate as a fraud or deceit" as used in section 485A-501, HRS; provided that this section is not intended to be all-inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent:

- (1) Unreasonable price/commission. Entering into a transaction with a customer in any security at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;
- (2) Contradicting prospectus information. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising

- or sales presentation in a deceptive or misleading manner;
- (3) Insider information. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, non-public information which would impact on the value of the security;
  - (4) Contradictory recommendations. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor;
  - (5) Bona fide distribution. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees; or parking or withholding securities;
  - (6) Relating to OTC securities. Although nothing in this section precludes application of the general anti-fraud provisions against anyone for practices similar in nature to the practices discussed below, the following subparagraphs specifically apply only in connection with the solicitation of a purchase or sale of OTC unlisted non-NASDAQ equity securities:
    - (A) ~~[Bid/ask]~~ Bid and ask price disclosure. Failing to disclose the firm's present bid and ask price of a particular security at the time of solicitation;

- (B) Commission disclosure. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions;
- (C) Short inventory position. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than three per cent of the issued and outstanding shares of that class of securities of the issuer provided that this subparagraph shall apply only if the firm is a market maker at the time of the solicitation;
- (D) Sales contests. Conducting sales contests in a particular security;
- (E) Delay executing sell orders. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders;
- (F) Secondary market solicitation. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market;
- (G) Differing compensation. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security;
- (H) Manipulative, deceptive, or fraudulent acts. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not

limited to the use of boiler room tactics or use of fictitious or nominee accounts;

- (I) Prospectus delivery. Failure to comply with any prospectus delivery requirement promulgated under federal law; or
- (J) Penny stock sales. Effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements as set forth in section 15(g) of the Securities Exchange Act." [Eff 6/30/08; am and comp ]  
(Auth: HRS §485A-606) (Imp: HRS §485A-501)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material except source notes and other notes, is underscored.

3. Additions to update source notes and other notes to reflect these amendments to sections are not bracketed, struck through, or underscored.

4 These amendments to and compilation of chapter 16-39, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on MM DD, YYYY, and filed with the Office of the Lieutenant Governor.

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NADINE Y. ANDO  
Director of Commerce and  
Consumer Affairs

APPROVED AS TO FORM:

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ANDREW I. KIM  
Deputy Attorney General

### **III. OLD BUSINESS**

B. Discussion and Action on the Small  
Business Statement After Public Hearing  
and Proposed Amendments to HAR  
Chapter 13-31, **Molokini Shoal Marine  
Life Conservation District, Maui,**  
promulgated by Department of Land and  
Natural Resources (DLNR)

**SMALL BUSINESS STATEMENT**  
**“AFTER” PUBLIC HEARING TO THE**  
**SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Land and Natural Resources

Administrative Rule Title and Chapter: HAR chapters 13-31, 13-230, and 13-257

Chapter Name: Molokini Shoal Marine Life Conservation District, Maui; General Provisions; and Day-Use Mooring Rules

Contact Person/Title: Kealii Sagum (DAR Legal Research Specialist)

Phone Number: 808-724-4234

E-mail Address: nicholas.k.sagum@hawaii.gov Date: 10/11/23

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☒ Yes ☐ No

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: ☐ New ☐ Repeal ☒ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☒ Yes ☐ No (If "No," no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☒ No

(If "Yes" no need to submit this form.)



**V. Please explain how the agency involved small business in the development of the proposed rules.**

Several group meetings and emails over a three year period including the creation of a Molokini Commercial tour representative working group that meet to work through various options for rule amendments and permit fees.

**a. Were there any recommendations incorporated into the proposed rules?**

**If yes, explain. If not, why not?**

Yes. We made significant changes to day use mooring rules allowing more flexibility in use and only permitted operators to take tours to Molokini, we changed fees from “per person” to “set based on passenger capacity” to reduce fee amounts and the administrative burden on the companies.

**VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:**

**1. A description of how opinions or comments from affected small businesses were solicited.**

Several group meetings and emails over a three year period including the creation of a Molokini Commercial tour representative working group that meet to work through various options for rule amendments and permit fees. Also, through the public hearing pursuant to HRS chapter 91.

**2. A summary of the public's and small businesses' comments.**

No comments were provided regarding impacts to small businesses; All comments were geared towards better enforcement of rules within the Molokini Shoal Marine Life Conservation District, Maui and enhancing the day-use mooring buoy program to minimize coral damage due to anchoring.

**3. A summary of the agency's response to those comments.**

DAR will continue to work with the Division of Conservation and Resources Enforcement to ensure maximum enforcement of the rules; The proposed rules are intended to streamline the day-use mooring buoy program by allowing expedited establishment, installation, and approval of day-use moorings by the Board of Land and Natural Resources as opposed to through rulemaking as is the current process.

**4. The number of persons who:**

(i) Attended the public hearing: 1 in person; 4 via Zoom

(ii) Testified at the hearing: 4 (via Zoom)

(iii) Submitted written comments: 0

**5. Was a request made at the hearing to change the proposed rule in a way that affected small business?**

☐ Yes ☒ No

(i) If “Yes,” was the change adopted? ☐ Yes ☐ No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This statement may be found on the SBRRB Website at:  
<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

## Small Business Regulatory Review Board

### MEETING MINUTES

August 17, 2023

### ZOOM RECORDING

- I. **CALL TO ORDER:** Chair Albitz called the meeting to order at 10:03 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Mary Albitz, Chair
- Robert Cundiff, Vice Chair
- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- Sanford Morioka
- Tessa Gomes
- Mark Ritchie

**ABSENT MEMBERS:**

- Dr. Nancy Atmospera-Walch
- Garth Yamanaka
- William Lydgate
- James (Kimo) Lee

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF JULY 20, 2023 MINUTES**

Mr. Mark Ritchie motioned to accept the July 20, 2023 meeting minutes, as presented. Mr. Jonathan Shick seconded the motion and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments to BWS Rules and Regulations Chapter I – V, Section 54 – 26 for the Adoption of New Water Rates and Charges, promulgated by the Board of Water Supply, City and County of Honolulu

Mr. Ernie Lau, Manager and Chief Engineer at the City and County of Honolulu Board of Water Supply (BWS), explained that all small businesses receiving water service from the BWS will be affected by the proposed water rate adjustments for all its customer classes – Single-Family and Multi-Unit Residential, Non-Residential, Agricultural, Non-Potable, and Recycled Water. These rate adjustments are part of a 5-year rate proposal. Community presentations and briefings on the rate proposal will be held in August 2023. Proposed rate changes would begin January 1, 2024

Mr. Lau provided the members with a presentation of the proposed updates to BWS Water-Rates and Charges. He discussed the history of BWS, which was created in 1929, stating that it is semi-autonomous and has a separate board that governs the policies and water rates of the department. As BWS is financially self-sufficient due to incoming water fees, it operates essentially as a utility. BWS services approximately 145 million gallons of water per day to one million customers on Oahu with 170,000 active services, 13 treatment facilities, and water sources all over the island.

A rate study was done in 2017 and BWS did not foresee a pandemic in its future projections. In 2023, inflation went up a much higher rate and has decreased BWS purchasing power. BWS has about 8% less purchasing power than projected. Power costs have also trended upward driven by fuel costs and the energy cost factor is 20% over budget than what was projected in the 2017 rate study.

Mr. Lau explained that the 2021 Red Hill response requires large investments in new BWS facilities. Monitoring wells for information on how the contamination is moving and exploratory wells to find new sources outside of its path. As a precaution, BWS had to shut down 3 wells and this caused BWS to lose source capacity.

BWS is proposing rates for 5 ½ - year period beginning January 1, 2024 through June 30, 2029. BWS considered alternative rate structures for non-residential (including small business) customers and determined the uniform rate per 1,000 gallons, regardless of usage, to be the most equitable, easiest to understand, and least expensive to implement. It was also decided to continue to provide substantially discounted rates (60% of cost of service) to agricultural customers.

Increases in the dollar amounts of direct costs experienced by small business customers will vary depending on the size of their water meter and actual water use. The percentage increases are as follows: January 1, 2024, 10%; July 1, 2024, 10%; July 1, 2025, 9%; July 1, 2026, 8.5%; July 1, 2027, 8%; July 1, 2028, 8%. There are no indirect costs to any customers as a result of these proposed changes.

Mr. Lau stated that these increases are necessary to continue to fund the operations and capital improvement program of the BWS at a level necessary to continue to provide safe and dependable water to its customers. The BWS is a self-supporting, semi-autonomous agency that receives no tax revenues. Nearly all of the revenue is from water sales to customers.

BWS considered alternative rate structures for non-residential (including small business) customers and determined the uniform rate per 1,000 gallons, regardless of usage, to be the most equitable, easiest to understand, and least expensive to implement. It was also decided to continue to provide substantially discounted rates (60% of cost of service) to agricultural customers.

## August 2023 Meeting Minutes

Second Vice Chair Jonathan Shick motioned to move the proposed amended rules to the Mayor for public hearing. Mark Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Chapter 13-31, Molokini Shoal Marine Life Conservation District, Maui, promulgated by Department of Land and Natural Resources (DLNR)

Discussion Leader and Second Vice Chair Shick noted that agenda items III. New Business B., C., and D. will be presented together. Mr. David Sakuda, DAR Fisheries Program Manager confirms and acknowledges that all three rules will be presented together by Mr. Russel Sparks, DAR Maui District Aquatic Biologist.

Mr. Sparks explained that the proposed rule changes would increase permit fees by \$725/year for smaller vessels (<25 passengers), \$1,475/year for mid-sized vessels (25-74 passengers) and \$2,975/year for larger vessels (>75 passengers). There are forty four boats (Snorkel, Dive, or Scuba dive operations) that are currently permitted to take passengers into the Molokini Marine Life Conservation District will be affected by these rule amendments.

These permit fee increases will amount to approximately \$61,500 dollars being collected by the Department per year. Of this sum, \$12,000 will be paid to OHA as revenue from submerged ceded lands, with the additional \$49,500 being used to administer the permits, correspond with and ensure compliance of the permit holders, operate a remote live web camera system within the MLCD, provide for stepped up enforcement of rules in the area, conduct routine resource monitoring and continue to work with permit holders to reduce crowding and potential impacts to marine ecosystem within the MLCD.

Mr. Sparks presented DAR's proposal of development and a timeline of significant events. The proposals moving forward are to reduce crowding, improve user experience and reduce impacts to the Molokini Shoal Ecosystem. DAR worked through various options for regulating the use of Molokini by the commercial tour operators and made significant changes to the day use mooring rules allowing for more flexibility in use of the area, strengthened language that allowed for only permitted operators to take tours to Molokini, and changed early plans on fees from per person to based on passenger capacity to reduce fee amounts and the administrative burden on the companies, etc.

DAR conducted extensive planning and scoping with all permit holders. DAR gathered input and adjusted the fee plan several times over a 3-year planning process. Fees were reduced and changed to a set fee rather than a per person fee to reduce record keeping and compliance requirements on the operators and agreed to reduce fees given other funding options to help cover the maintenance and upkeep of the day use mooring infrastructure within the MLCD.

Discussion Leader and Second Vice Chair Shick had a question relating to the operators that choose not to use a permit for an extended period of time, was there any feedback. Mr. Sparks responded that the department would like to reduce and limit the amount of those permits. Vessels and commercial operators usually sell their permits with the operation. If someone does not use their permit, for example, three operators have lost their vessels in the Lahaina fire, there is no force of operation to maintain their permit.

Mr. Mark Ritchie commented that it is a very comprehensive approach to managing MLCD, and there has been a lot of work done with the stakeholders.

Chair Mary Albitz mentions that the SBRRB received a request from Mr. Tim Lyons of the Ocean Tourism Coalition on Maui to postpone DAR's presentation to the board. Mr. Sparks states that the testimony provided to the board was directly towards the permit conditions and the ability to make changes to the permits as needed. DAR decided to add language of a 90-day advance notice to the permit holders to be transparent. Ms. Albitz adds that given what has happened in Lahaina with the fires, does that also mean that there might be a way to waive or discount the fees to the permit holders that were affected by the Lahaina fire. Mr. Sparks responds that there is language in the draft rules that does give DAR the authority to change, waive or reduce fees if need be.

Discussion Leader and Second Vice Chair Shick motioned to move the proposed amendments to HAR Chapter 13-31 Molokini Shoal Marine Life Conservation District, Maui to public hearing. Sanford Morioka seconded the motion, and the Board members unanimously agreed.

**C. Discussion and Action on Proposed Amendments to HAR Chapter 13-230, General Provisions, promulgated by DLNR**

See discussion and presentation under B. Discussion and Action on Proposed Amendments to HAR Chapter 13-31, Molokini Shoal Marine Life Conservation District, Maui.

Mr. Mark Ritchie motioned to move the proposed rule to public hearing. Second Chair Shick seconded the motion, and the Board members unanimously agreed.

**D. Discussion and Action on Proposed Amendments to HAR Chapter 13-257, Day-Use Mooring Rules, promulgated by DLNR**

See discussion and presentation under B. Discussion and Action on Proposed Amendments to HAR Chapter 13-31, Molokini Shoal Marine Life Conservation District, Maui.

Second Chair Shick motioned to move the proposed rule to public hearing. Mr. Sanford Morioka seconded the motion, and the Board members unanimously agreed.

Amendment and Compilation of Chapter 13-31  
Hawaii Administrative Rules

(Date adopted)

1. Chapter 13-31, Hawaii Administrative Rules, entitled "Molokini Shoal Marine Life Conservation District, Maui", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART 1 MARINE LIFE CONSERVATION DISTRICTS

CHAPTER 31

MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT, MAUI

- §13-31-1 Definitions
- §13-31-2 Boundaries
- §13-31-3 Prohibited activities
- §13-31-4 Allowed activities
- §13-31-5 Exceptions; permits
- §13-31-6 Penalty

Historical note: Chapter 31 of title 13 is based substantially upon regulation 42 of the division of fish and game, department of land and natural resources, State of Hawaii. [Eff 7/8/77; R 5/26/81]

**§13-31-1 Definitions.** As used in this chapter unless otherwise provided:

~~["Trolling" means trailing a line attached to either a baited hook or artificial lure from a boat moving faster than slow-no-wake speed;~~

~~"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour;~~

~~"Demonstrate" as is used in section 13-31-5(3) means proof such as in any combination of documents including but not limited to copies of commercial licenses, excise tax reports, brochures, affidavits, etc. The burden of proof lies with the applicant.~~

~~"Active commercial vessel operation" as used in section 13-31-5(3) means use no less than two times every quarter over four quarters (12 months) and greater than eight times per year]~~

"Anchor" means to drop or deploy an anchor into the water. For the purposes of this section, "anchor" does not include attaching to a legal mooring.

"Finfish" means any of various species of marine life that uses fins to swim, not including marine mammals or sea turtles.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweed or other marine plants, including any part, product, seed, or holdfast thereof.

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, marine life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, marine life by any person who is in the water, or in a vessel on the water, or on or about the shore where marine life can be fished for, caught, captured, confined, or harvested, shall be construed as taking. Any gear, equipment, or tool possessed in the water shall be construed as being in use for the purposes of taking marine life.

"Trolling" means trailing a line attached to either a baited hook or artificial lure from a boat moving faster than slow-no-wake speed. [Eff and comp 9/16/95; am and comp ] (Auth: HRS §190-3) (Imp: §§190-3, 190-4.5)

**§13-31-2 Boundaries.** The Molokini shoal marine life conservation district shall include subzones A and B of that portion of the submerged lands and overlying waters surrounding Molokini islet, county of Maui, as follows:

- (1) Subzone A is defined as that portion of submerged lands and overlying waters within the crater, beginning at a point at the highwater mark of Lalilali Point, then along the highwater mark of the northern shoreline eastward until Pahe'e o Lono Point, then west along a straight line to the end of the submerged ridge (shoal) extending from Lalilali Point, then along the top of the shoal back to the point of beginning; and
- (2) Subzone B is defined as that portion of submerged lands and overlying waters outside the crater, encircling the islet out to 100 yards, seaward of the point of beginning at the highwater mark of Lalilali Point then eastward along the highwater mark of the



southern shoreline of the islet to Pahe'e o Lono Point, then west along a straight line from Pahe'e o Lono Point to the end of the shoal extending from Lalilali Point, then along the top of the shoal back to the point of beginning.

Subzone areas A and B are illustrated in [~~"Map of Molokini Shoal Marine Life Conservation District, Maui 1/18/94" attached~~] Exhibit A entitled "Map of Molokini Shoal Marine Life Conservation District, Maui", dated June 24, 2019, located at the end of this chapter. [Eff 5/26/81; am, ren, and comp 9/16/95; am and comp ] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-2, 190-3)

**§13-31-3 Prohibited activities.** [~~No person shall engage in the following activities in~~] Within the Molokini [shoal marine life conservation district] Shoal Marine Life Conservation District, county of Maui, no person shall:

- (1) [~~Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and opihi, live coral, algae or limu, or other marine life, or eggs thereof~~] Take marine life except as provided for in section 13-31-4(1);
- (2) Have or possess in the water, any [~~spear, trap, net, crowbar,~~] gear, equipment, tool, or [~~any~~] other device that may be used for the taking or altering of [~~marine life,~~] any geological feature[7] or specimen;
- (3) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature[7] or specimen;
- (4) Feed or deliberately introduce any food material, substance, or attractant, directly to or in the vicinity of any marine life, by any means for any purpose except as provided in section 13-31-4(1);

- (5) ~~[Moor boats for commercial activities]~~  
Engage in commercial activity involving  
ocean users getting in or on the water,  
including but not limited to swimming,  
snorkeling, diving, kayaking, or paddling,  
except as provided for in section 13-31-5;  
or
- (6) Anchor a boat ~~[when a day use mooring system~~  
~~and management plan is established by this~~  
~~department].~~ [Eff 5/26/61; am, ren, and  
comp 9/16/95; am and comp ]  
(Auth: §§190-3, 190-4.5) (Imp HRS §§190-1,  
190-3, 190-4.5)

**§13-31-4 Allowed activities.** A person ~~[may:~~

- ~~(1) Fish for, catch, take, possess, or remove]~~  
may take or possess any finfish by trolling  
in subzone B [only;
- ~~(2) Possess in the water, any knife and any~~  
~~shark billy, bang stick, powerhead, or~~  
~~carbon dioxide (CO2) injector for the sole~~  
~~purpose of personal safety.] only.~~ [Eff  
5/26/81; am, ren, and comp 9/16/95; am and  
comp ] (Auth: HRS §§190-3, 190-  
4.5) (Imp: HRS §§190-1, 190-3, 190-4.5)

**§13-31-5 Exceptions; permits.** (a) The  
department may issue ~~[permits]~~ special activity  
permits, not longer than one year in duration, to  
engage in activities otherwise prohibited by law ~~[and~~  
~~section 13-31-3, under such terms and conditions it~~  
~~deems necessary to carry out the purpose of chapter~~  
~~190, Hawaii Revised Statutes:~~

- ~~(1) To take]~~ for scientific, educational,  
management, or propagation~~[, or other]~~  
purposes in conformance with chapter 190 and  
section 187A-6, Hawaii Revised Statutes~~[,~~

~~any form of marine life or eggs thereof otherwise prohibited by law;].~~

[+2+] (b) Except as provided in chapter 13-257, subchapter 4, the department may issue marine life conservation district commercial use permits to engage in commercial activity, excluding the taking of marine life, with [a marine life conservation district use permit.] the following conditions:

- (1) Each boat shall be required to obtain a separate permit[. An applicant for this permit shall pay a non-refundable permit fee of \$50 valid for a two-year duration.];
- (2) Upon adoption of this chapter, active permits with an expiration date of December 14, 2023 shall have a new expiration date of December 31, 2023. Thereafter, permits shall be valid for not longer than two years and shall expire on December 31 of each odd-numbered year;
- (3) Each permittee shall pay a permit fee at the time of renewal. The fee shall be set based on three categories of passenger capacity: Category 1 for vessels with passenger capacities lower than 25; Category 2 for vessels with passenger capacities between 25 and 74; and Category 3 for vessels with passenger capacities equal to 75 or more;
- (4) Permit renewal fees shall be set at the following: Category 1 = \$1,500; Category 2= \$3,000; and Category 3= \$6,000;
- (5) The department may establish permit terms and conditions that provide for the reduction or waiver of permit fees as the department deems appropriate;
- (6) Prior to [its] the expiration of the permit, the permittee may apply for reissuance. Unless the permit is reissued, it shall automatically expire on the expiration [date. The permittee shall indemnify, defend, and hold harmless the State of

~~Hawaii, its successors, assigns, officers, employees, contractors, and agents from and against any loss, liability, claim or demand for property damage, personal injury and death arising from any act or omission related to this permit;~~ date;

- [~~(3)~~] (7) An application for reissuance of this permit shall be accepted only from a commercial operator who ~~[can demonstrate active commercial vessel operation within the Molokini shoal marine life conservation district]~~ possesses a current permit within the twelve-month period immediately prior to the [effective date of these rules,] expiration date of their current permit and who possesses a commercial vessel use permit for the use of state boating facilities issued in accordance with section [13-231-57,] 13-231-57 or a commercial vessel registration issued in accordance with section 13-256-4. [No application for a permit shall be accepted after ninety days of the effective date of these rules;]
- (8) The permittee shall indemnify, defend, and hold harmless the State of Hawaii, its successors, assigns, officers, employees, contractors, and agents from and against any loss, liability, claim or demand for property damage, personal injury and death arising from any act or omission related to this permit;
- [~~(4)~~] (9) The permit shall be incorporated as an addendum to the commercial vessel use permit for the use of state boating facilities issued in accordance with section 13-231-57, or a commercial vessel registration issued in accordance with section 13-256-4;
- [~~(5)~~] (10) The permit shall be non-transferrable, except as provided by section 13-231-62;  
[and]
- (11) The Department may establish additional permit terms and conditions deemed necessary

to minimize any adverse effect within the conservation district; provided that the department shall provide written notice of any change in permit conditions at least ninety calendar days prior to the effective date of the change, except, as determined by the department, when an immediate change in permit conditions is necessary to protect or preserve the conservation district or to protect the health and safety of the public; and

[~~(6)~~] (12) The board may revoke any permit for any infraction of the terms and conditions of the permit, and a person whose permit is revoked shall not be eligible to renew a permit until the expiration of one year from the date of revocation. [Eff 5/26/81; am 3/2/87; am, ren, and comp 9/16/95; am and comp ] (Auth: §§187A-6, 190-3, 190-4.5) (Imp: HRS §§90-3(b), 187A-6, 190-4)

**§13-31-6 Penalty.** A person violating the provisions of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be punished as provided by law." [Eff 5/26/81; am, ren, and comp 9/16/95; comp ] (Auth: HRS §§190-3, 190-4.5) (Imp: HRS §190-5)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-31, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on (date), and filed with the Office of the Lieutenant Governor.

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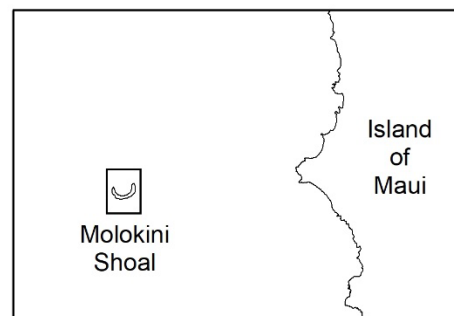
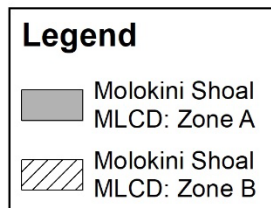
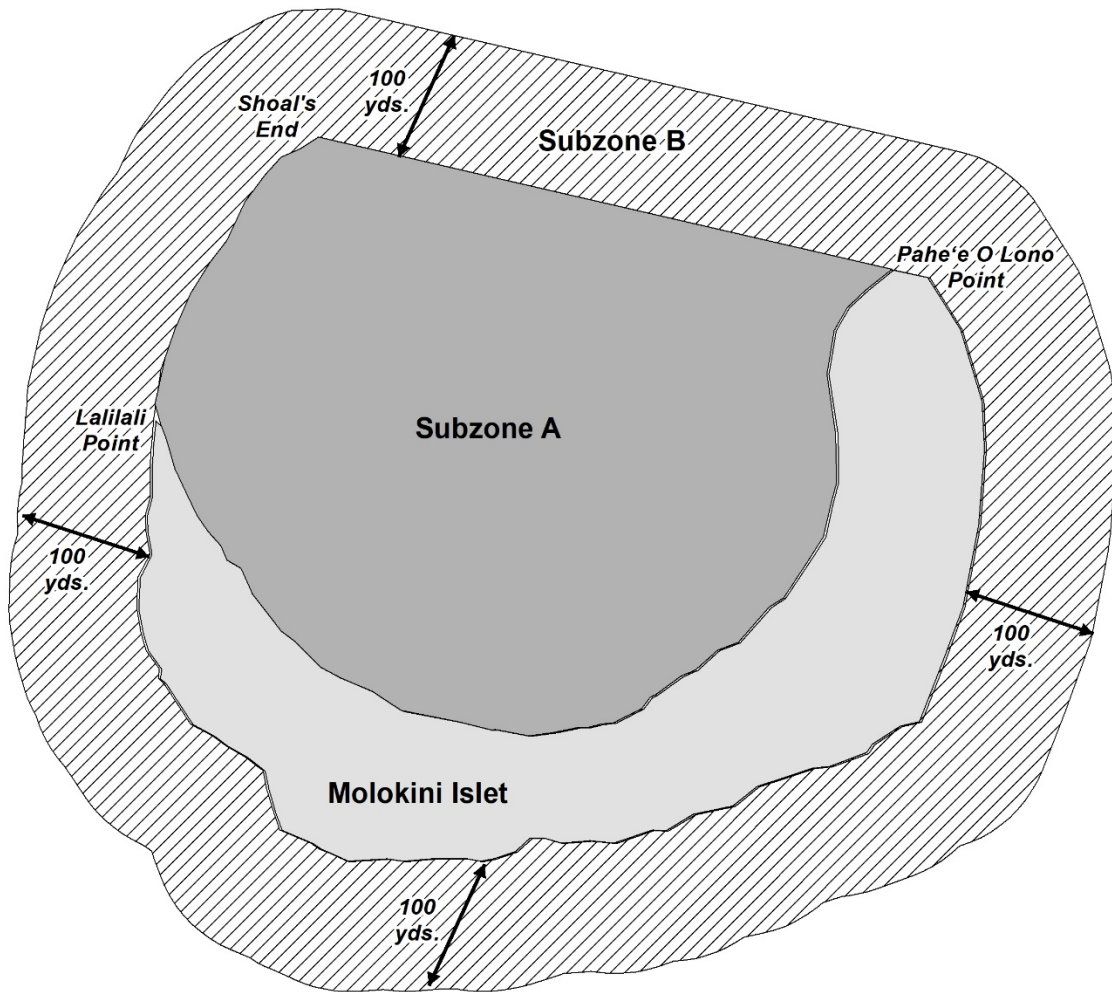
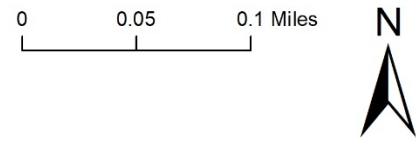
DAWN N. S. CHANG  
Chairperson, Board of Land  
and Natural Resources

APPROVED AS TO FORM:

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Deputy Attorney General

**Exhibit A. Map of Molokini Shoal  
Marine Life Conservation District, Maui  
June 24, 2019**



### **III. OLD BUSINESS**

C. Discussion and Action on the Small  
Business Statement After Public Hearing  
and Proposed Amendments to HAR  
Chapter 13-230, **General Provisions**,  
promulgated by DLNR



Amendment and Compilation of Chapter 13-230  
Hawaii Administrative Rules

(Date adopted)

1. Chapter 13-230, Hawaii Administrative Rules,  
entitled "General Provisions", is amended and compiled  
to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT FACILITIES AND PROVISIONS GENERALLY  
APPLICABLE TO ALL STATE NAVIGABLE WATERS

CHAPTER 230

GENERAL PROVISIONS

Historical note

Subchapter 1 Scope and Definitions

§13-230-1	Purpose and scope
§13-230-2	Interpretation
§13-230-3	Severability
§13-230-4	Penalties and prosecution
§13-230-5	Judicial review
§13-230-6	Notice

- §13-230-7 Tampering with, defacing or removing notices
- §13-230-8 Definitions
- §§13-230-9 to 13-230-19 (Reserved)

## Subchapter 2 Determination of Residency

- §13-230-20 Purpose
- §13-230-21 Repealed
- §13-230-22 Twelve-month rule
- §13-230-23 Indications of residence
- §13-230-24 Rules of construction
- §13-230-25 Particular categories
- §13-230-26 Determination of residence procedure
- §13-230-27 Permittee required to report change of residence
- §13-230-28 Appeals
- §13-230-29 Misrepresentation

**Historical note.** This chapter is based on general provisions, definitions, and determination of residency of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; comp 12/7/13]

## SUBCHAPTER 1

### SCOPE AND DEFINITIONS

**§13-230-1 Purpose and scope.** The purpose of these rules is to secure the most effective control

and management of the small boat harbors and facilities of the State in order that the general public may enjoy safe, orderly, and convenient water recreation. These rules are intended to harmonize and coordinate the department's powers and duties with all applicable public laws, and are also intended to govern the use or operation of vessels and the activities of persons in the small boat harbors, shores, ocean waters, and navigable streams of the State. [Eff 2/24/94; comp 12/7/13; comp  
] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

**§13-230-2 Interpretation.** If any section of these rules is inconsistent with any laws of the United States or any rule, or standard established pursuant thereto, such section shall be construed, superseded, or governed thereby. Nothing contained in these rules shall be construed to limit the powers of any state department or agency. Each provision of these rules is also intended to be construed most liberally in light of the purpose stated in section 13-230-1. [Eff 2/24/94; comp 12/7/13; comp  
] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

**§13-230-3 Severability.** The provisions of these rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of such remainder to other persons or property shall not be affected. [Eff 2/24/94; comp 12/7/13; comp  
] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

**§13-230-4 Penalties and prosecution.** (a) Violation of rules, penalty. Any vessel, its agent, owner, or crew that violates the rules of the

department, including vehicular parking or traffic movement and unauthorized discharge, dumping, or abandoning of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, may be fined or deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days, in accordance with section 200-14, Hawaii Revised Statutes.

(b) General administrative penalties. Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder in accordance with section 200-14.5, Hawaii Revised Statutes. Each day or instance of violation shall constitute a separate offense.  
[Eff 2/24/94; comp 12/7/13; am 12/31/18; comp  
] (Auth: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

**§13-230-5 Judicial review.** Nothing contained in these rules shall be construed to preclude appropriate resort to judicial remedy or review. [Eff 2/24/94; comp 12/7/13; comp ] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

**§13-230-6 Notice.** Where notice to a permittee, co-owner, lien holder, owner or any other party is required by this chapter the department shall effect service by one of the following:

- (1) Posting the notice in a conspicuous place aboard the permittee's vessel or at the assigned berth;

(2) Mailing the notice to the person by certified mail, return receipt requested, at the person's last known address, provided that service by mail is deemed received and completed five days after the date of mailing; or

(3) Personal service;

provided that in an emergency, where life or property is endangered or if a vessel may interfere with other vessels, construction or maintenance of berthing facilities, or with the free and proper navigation of a waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. [Eff 2/24/94; comp 12/7/13; comp

] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

**§13-230-7 Tampering with, defacing or removing notices.** No person shall tamper with, deface, or remove any notice posted by the department pursuant to section 13-230-6 except the owner of the vessel or the permittee assigned to the berth. [Eff 2/24/94; comp 12/7/13; comp ] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

**§13-230-8 Definitions.** When used in these rules promulgated pursuant to chapter 200, Hawaii Revised Statutes, unless otherwise specifically provided or the context clearly indicates otherwise:

"Abandon" when applied to animals, means to leave an animal at any location, whether intentionally, recklessly, or negligently, without the owner intending to return for the animal and without the permission of the public or private property owner.

"Adult" means a person who has reached majority.

"Agreement" means the agreement between the boat owner and the State as required by section 13-231-2.

"Anchoring" means to secure a vessel temporarily to submerged land by dropping an anchoring device from a vessel.

"Anchoring device" means a device made of metal or similar material, attached by rope or chain to a vessel, which can be deployed to submerged land to secure the vessel in a particular place.

"Approved" means that a fitting, appliance, apparatus, or item of equipment to be fitted or carried in a vessel, or by any particular arrangement, is sanctioned by the commandant of the Coast Guard, unless otherwise stated by the department.

"Approved backflow prevention device" means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or the Uniform Plumbing Code adopted by the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).

"Approved marine surveyor" means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with section 13-231-45(h) and (i).

"Approved vessel inspector" means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit.

"Assigned berth" means a berth that is assigned to a permittee by a valid regular mooring permit.

"Background" means that portion of the hull or superstructure, or a specially provided backing plate, upon which the numbers are placed, but shall not include any border, trim, outlining, or shading of the numerals or letters.

"Barge" means a non-self-propelled vessel.

"Berth" means any place where a vessel is anchored, moored, or made fast or laid alongside a dock, quay, catwalk, or pier.

"Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

"Boat" means a small vessel propelled by oars or paddles or by sail or power.

"Boat dealer" means a person engaged wholly or partly, for gain or compensation, in the business of selling vessels or offering vessels for sale, buying or taking in vessels for the purpose of resale, or exchanging vessels.

"Boat livery" means a person or entity who is engaged in the business of renting, leasing, or chartering vessels.

"Boat manufacturer" means a person engaged in:

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

"Boat owner" means the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. The documentation of ownership must meet the requirements of section 13-241-5(c).

"Recreational boating accident":

- (1) Means a collision, accident, or other casualty involving:
  - (A) A person's death;
  - (B) Complete loss of a vessel;
  - (C) Damage to a vessel amounting to \$2,000 or more;
  - (D) The disappearance of a person from a vessel under circumstances indicating death or injury to that person; or

- (E) The injury to a person requiring medical treatment beyond first aid.
- (2) Includes damage to a vessel or its equipment, loss of life, or injury to any person or object:
  - (A) Caused by a moving vessel's wake, wash, or waves, or by a vessel's capsizing, or collision with another vessel or object;
  - (B) Caused by flooding, fire, or explosion;
  - (C) Caused when a person falls overboard; or
  - (D) On board a vessel.

"Bona fide fishing tournament" means a fishing tournament sponsored by a boat club, fishing club or yacht club, or a business or non-profit organization formed for the primary purpose of sponsoring a fishing tournament where participation is invited from the general public.

"Buoy" means any floating aids to navigation moored to the seabed and used to convey a message.

"Business" means any and all activities engaged in or caused to be engaged in by any person or legal entity, including, but not limited to, solicitations and advertisements, with the object of making a profit or obtaining an economic benefit either directly or indirectly.

"C.F.R." means the Code of Federal Regulations.

"Camping" means the use and occupation of any portion of a state small boat harbor, boat launching facility, or any other property managed by the department as a temporary or permanent dwelling place or sleeping place (including the laying down of bedding for the purpose of sleeping). Camping includes being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, or storing personal belongings, or making any fire, or using any tents, shelter, or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of the circumstances,



that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

"Canoe" means outrigger canoe.

"Carrying passengers for hire" means the carriage of any person or persons by a vessel for compensation flowing, whether directly or indirectly, to the owner, charterer, operator, agent, or any other person interested in the vessel.

"Catamaran" means a multi-hulled vessel with a broad, flat deck that is affixed on top of closed cylinders which are used for buoyancy, the basic design of which is usually implemented with two rows of floats as a catamaran or with three rows of floats as a trimaran.

"Certificate" means a certificate of number issued by the department for an undocumented vessel.

"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or the chairperson's duly authorized representative or subordinate.

"Civil union" means a union between two individuals established pursuant to chapter 572B, Hawaii Revised Statutes.

"Civil union partner" means an individual who is a party to a civil union established pursuant to chapter 572B, Hawaii Revised Statutes.

"Coast Guard" means the United States Coast Guard, or its successor agency.

"Colony" means a collective of free-roaming, abandoned, stray, or feral cats.

"Commercial activity" means to engage in any action or attempt to engage in any action designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities; the providing of services relating to or connected with trade, traffic, or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of

business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes.

"Commercial fishing motorboat" means a motorboat used for taking fish for profit or gain or as a means of livelihood.

"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides.

"Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for a racing competition; provided that no passenger pays compensation for riding the boat during the practice.

"Commercial motorboat" means any motorboat used for hire, profit or gain.

"Commercial ocean recreation activities" means any ocean recreation activity offered for a fee.

"Commercial purposes" includes the staging, loading, and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

"Commercial vessel" means a vessel engaged in any trade, business, or commercial activity, including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use.

"Compensation" means any valuable consideration.

"Contrivance" means any man-made object or artificial arrangement not used or intended to be used for transportation which may be floated upon or suspended within or on the water.

"Day-use mooring buoy" means a mooring buoy that can be used for a maximum of two and one-half hours at a time and overnight mooring is prohibited.

"Department" means the department of land and natural resources of the State of Hawaii.

"Dinghy" means a small open boat under thirteen feet in length, which may be propelled by oars, sails, or an outboard motor and carried on or towed by a larger boat or yacht.

"Display area" means the area on a sign or buoy used for display of a waterway marker symbol.

"Diver's flag" means a red flag with a white diagonal running from the masthead to lower outside corner.

"Division" means the department of land and natural resources division of boating and ocean recreation.

"Documented vessel" means any vessel which has a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has not been navigated from or has not vacated an assigned mooring or facility within or offshore of a state small boat harbor at least once within a ninety-day period, or cannot be made seaworthy upon thirty days' notice to the owner.

"Enforcement officer" means a police officer and any other state or county officer charged with the enforcement of state laws.

"Federal laws and requirements" means all statutes, regulations, and other laws of the United States, which may be applicable to these rules.

"Feral" means having escaped or been released from domestication and reverted to a wild state and any offspring resulting therefrom.

"Firm" includes a business organization such as a sole proprietorship, partnership, or corporation which is licensed to engage in or conduct business in the State.

"Foreign built vessel" means any vessel whose hull was constructed in a country other than the United States.

"Forward half of the vessel" means any portion of the vessel in front of a point equidistant from the stem and stern of the vessel.

"Free diver" means a person who is using a mask and snorkel, other than for SCUBA diving, who submerges under water or breaks the surface of the water.

"Global Positioning System" (GPS) means the method of terrestrial navigation using a GPS electronic instrument, receiving data from a network of orbiting satellites to locate one's position by latitude and longitude.

"Gross receipts" means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel or permitted activity.

"Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of a person and of managing the property of that person.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than natural parents--traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Handboard" means any type of surf riding board that is:

- (1) With or without skegs;
- (2) Worn on one or both of the operator's hands;
- (3) Is less than sixteen inches in overall length; and
- (4) Is used for the sport of wave riding.

"Harbor resident" means the owner, co-owner, or their spouse and their legal dependents authorized by

the department to reside on board a vessel used as the principal habitation of the owner.

"Hearing officer" means a person appointed by the chairperson to hear appeals.

"High seas" means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, or in the internal waters of the United States.

"Highway" means "street" as defined in this section.

"Houseboat" means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or capable of being moved by oars, sweeps, or towing.

"Hull" means the shell, frame, or body of a vessel, exclusive of masts, yards, sails, riggings, machinery, and equipment.

"Immediate family" means any person and his or her spouse and dependent children under twenty-one years of age.

"Inland waters" mean the waters shoreward of the territorial sea baseline.

"Interest" includes any claim of right, title, ownership of stock, shares, profit, benefit, or gain in a corporation, partnership, joint venture, or any other business entity that has a use permit.

"Kayak" means a watercraft that has an open or covered top and is designed to hold one or more participants and propelled by use of a single- or double-bladed paddle.

"Launch" means a small motorboat that is open or that has the forepart of the hull covered.

"Legal dependent" or "dependent" means those persons who are defined as dependents by law, e.g., a spouse or minor child, or who are defined as dependents under Internal Revenue Service regulations or by the Armed Forces of the United States, or any of the following persons who are dependent upon a permittee for all or a substantial portion of the person's living expenses:

- (1) Spouse;
- (2) A son or daughter who is:

- (A) Unmarried and under eighteen years;
  - (B) Unmarried and under twenty years if a full-time student at a high school, business school, or technical school;
  - (C) Unmarried and under twenty-two years if a full-time undergraduate student at a college; or
  - (D) Unmarried and physically handicapped so as to be incapable of self-support;
- (3) A parent or grandparent if physically handicapped so as to be incapable of self-support;
  - (4) A grandchild, brother, or sister under eighteen years of age.

"Legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest for the vessel.

"Length" when applied to vessels covered by these rules, means the measurement of a vessel from end to end over the deck. It is a straight-line measurement of the overall length from the foremost part of the vessel measured parallel to the centerline. Bowsprits, boomkins, rudders, motor brackets, and similar fittings or attachments or sheer are not to be included in the measurement. In case of a vessel of an open type or with a cockpit, the measurement is taken between the foremost and aftermost extremities of the hull exclusive of sheer.

In vessels having more than one deck, it is the length measured from the foremost part of the bow to the aftermost part at the stern exclusive of sheer.

"Lienholder" means a person holding a recorded security interest in a vessel.

"Lifeboat" means a boat carried aboard a vessel and used solely for lifesaving purposes, but not including dinghies, tenders, speedboats, or other types of craft carried aboard a vessel and used for other than lifesaving purposes.

"Liquor" or "intoxicating liquor" shall mean the same as defined in section 281-1, Hawaii Revised Statutes.

"Litter" means any and all types of debris and substances, whether liquid or solid, and materials such as garbage, refuse, rubbish, glass, cans, bottles, paper, wrappings, fish or animal carcasses, or any other nauseating or offensive matter or any machinery, appliance, or automobile, or parts thereof, or any other substances which render small boat harbor lands or facilities unsightly, noxious, or otherwise unwholesome to the detriment of the public health and welfare or the enjoyment of the small boat harbor for recreational purposes.

"Livery boat" means a vessel which is rented, leased, or chartered by a person who is engaged in the business of renting, leasing, or chartering vessels.

"Living aboard" means the substantial use of a vessel as a place of abode, dwelling, living quarters, or residence, including, but not limited to, the regular use for such purposes during weekends.

"Machinery" means all internal combustion engines located within the vessel and all motor or mechanical devices capable of propelling vessels.

"Majority" means the age specified under section 577-1, Hawaii Revised Statutes.

"Minor" means a person who has not reached the age of majority.

"Moor" means to secure a boat by making it fast with cables, lines, or anchors.

"Mooring" means a buoy attached by rope or chain to a permanently placed weight or structure situated within a submerged land area and to which a vessel can be made permanently or temporarily secured. "Moorings" are also referred to as "mooring buoys".

"Motorboat" means any vessel which is equipped with propulsion machinery, including steam. This term includes, but is not limited to, wet bikes, motorized surfboards, and any other vessel temporarily or permanently equipped with a motor.

"Navigable streams" means the waters of estuaries and tributaries of the streams of each island of the State, where boating and water related activities, recreational or commercial, may be carried on, whether the mouths of the streams are physically opened or not

to ocean waters for intra or interstate commerce or navigation.

"Nonresident" means a person who is not a resident of the State of Hawaii.

"Ocean recreation management area" (ORMA) means ocean waters of the State that have been designated for specific activities as described in chapter 13-256, Ocean Recreation Management Rules and Areas.

"Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.

"Open ocean racing boat" means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed board racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

"Operate" means to navigate or otherwise use a vessel on or in the waters of the State.

"Operator" means a person who operates, or who has charge of the navigation or use of, a vessel.

"Operator permit" means the permit issued by the department which authorizes either the direct operation or the offering for a fee of surfboards and sailboards or any vessel, watercraft or water sports equipment on the ocean waters and navigable streams of the State.

"Outrigger canoe" means a canoe having the inclusion of a rig known as an outrigger which acts as a counterpoise or balance, rigged out from the side of the canoe. A number of spars (iako), usually two but up to as many as ten depending on the canoe's origin and purpose, are lashed across and to the canoe gunwales, extending outwards for a given distance and truncating with the attachment of a flotation device (ama).

"Owner" shall be synonymous with the word "boat owner" as defined in this section.

"Paddleboard" means any type of board that is:

- (1) Without skegs;
- (2) Does not exceed four feet in length; and
- (3) Is used for the sport of surfriding.



"Paipo board" shall be synonymous with the word "paddleboard" as defined in this section.

"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline, which is towed by a vessel.

"Parent" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. It shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when the person has been in loco parentis to the minor for the twelve-month period immediately preceding the residence determination date.

"Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

"Passenger" means every person carried on board a vessel other than:

- (1) The owner or the owner's representative;
- (2) The operator;
- (3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and are paid for their services; or
- (4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

"Person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity.

"Personal flotation device" is a technical term for a life preserver that has been approved and certified by the United States Coast Guard and capable of providing at least ninety per cent of factory-rated flotation capacity.

"Pet owner" means any person owning, harboring or keeping a dog, cat, or other domestic pet, or having custody thereof.

"Power driven catamaran" means a catamaran propelled by machinery whether under sail or not.

"Power-driven vessel" means any vessel propelled by machinery.

"Pram" means a small lightweight nearly flat-bottomed boat with a broad transom and usually square-bow often used as a dinghy.

"Principal owner" means a person whose name appears on a certificate of number as the primary owner or who is named as managing owner of a Coast Guard documented vessel.

"Principally used" means a measurement of the time when a vessel is on the waters of the United States, a state, territory, province, or country and includes the time when the vessel is not in motion, as, for instance, when the vessel is moored or at anchor, as well as the time when the vessel is being navigated.

"Rafting" means tying up or otherwise attaching one vessel to another vessel that is already attached to a mooring or similar device, or to another vessel that is already anchored.

"Reciprocal beneficiary" means an adult who is a party to a valid reciprocal beneficiary relationship and meets the requisites for a valid reciprocal beneficiary relationship as set forth in chapter 572C, Hawaii Revised Statutes.

"Recreation" means activities in which there is direct and intimate contact with water including, but not limited to, fishing, swimming, surfing, boating, water skiing, and viewing or enjoying historical, archeological, scenic, or scientific sites.

"Recreational vessel" means any vessel that is being used for pleasure and not for conducting commercial activity.

"Regatta" or "marine parade" means an organized water event of limited duration which is conducted according to a prearranged schedule.

"Registration sticker" means a pair of stickers, plates, tabs, or other devices issued by the department with certificates of number and renewals thereof to be affixed to the vessel to indicate that the vessel's certificate of number is current and valid.

"Regular permittee" means a person holding a valid regular mooring permit.

"Regulatory marker" means a waterway marker which indicates the existence of regulatory areas, speed zones or restricted areas and which has no equivalent in the United States Coast Guard system of navigational aids.

"Residence" or "residence status" means a combination of physical presence in a place and the intent to make such place one's permanent home.

"Residency determination date" means:

- (1) The date a person applies for a use permit or for application renewal;
- (2) The date of issuance or renewal of a use permit;
- (3) The date the department makes a residency status determination following the receipt of a completed questionnaire submitted by a person classified as a nonresident pursuant to section 13-230-27; or
- (4) The date of a hearing officer's decision on a petition submitted to the department as prescribed in section 13-230-28.

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to each roadway separately but not to all such roadways collectively.

"Rules" means the rules governing small boat harbors, facilities under the jurisdiction of the division, and State ocean waters as set forth in Title 13, Subtitle 11 - Ocean Recreation and Coastal Areas.

"Rules of the road" means the federal statutory and regulatory rules governing navigation of vessels.

These rules are published by the Coast Guard in pamphlet form and known as Navigation Rules - International - Inland COMDTINST M16672.2B.

"Sailboard" means any type of board that exceeds four feet in length and is propelled by a detachable sail apparatus.

"Sailing vessel" means any vessel propelled by sail only. Every power-driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under sail or not, is to be considered a power-driven vessel.

"SCUBA" means self-contained underwater breathing apparatus and includes all forms of self-contained underwater breathing apparatuses, e.g., re-breathers, open-circuit, semi-closed or closed circuit or surface-supplied breathing apparatuses.

"Security interest" means an interest in a vessel reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended for security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions contained in article 9, chapter 490 and section 490:1-201, Hawaii Revised Statutes.

"Sheer" means the longitudinal upward curve of the deck, gunwales, and lines of a vessel, when viewed from the side.

"Shore waters" or "shores" means any shores or waters between the three nautical mile limit and the shoreline of the islands of the State of Hawaii.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Sign" means any device for carrying a message which is attached to another object such as a piling, buoy, structure, or land itself.

"Skeg" means any fin-like projection.

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

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles an hour.

"Small boat harbor" means those harbors or portions of harbors, and any interest in property, whether real, personal, or mixed connected therewith under the care and control of the department, which are used as described in section 200-9, Hawaii Revised Statutes.

"Snorkeler" shall be synonymous with the word "free diver" as used in this section.

"Spouse" means a marriage partner, reciprocal beneficiary, or civil union partner of an individual.

"Stand" or "standing" means the halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

"State" means the State of Hawaii.

"State aid to navigation" means a waterway marker which is the equivalent of a United States Coast Guard aid to navigation.

"Stay aboard" or "staying aboard" means a person or persons aboard any vessel with prior notice to the department or a stay aboard permit between the hours of 12:00 midnight and 6:00 A.M., while the vessel is moored in a state small boat harbor or offshore mooring area.

"Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Stray" means any dog, cat, or other animal without a microchip or other registered owner-identifier or that is living or roaming off its owner's property without permission to be on other public or private property. Strays may also be feral or abandoned.

"Street" means the entire width between boundary lines of every way publicly maintained in any small boat harbor when any part thereof is open to the public for purposes of vehicular traffic.

"Surfboard" means any type of board that exceeds four feet in length and is used for the sport of surf riding.

"Symbols" means geometric figures such as a diamond, circle, or rectangle, used to convey a basic message.

"Tahiti moor" means the mooring of a vessel where one end of the vessel is moored by a rope or chain attached to a buoy that is attached to a pile or device that includes, but is not limited to, an anchor, concrete block or similar device placed or dropped on submerged land. The other end of the vessel is moored to the facility that includes, but is not limited to, breakwaters, catwalk, piers, and docks where direct access can be made from the facility to the vessel either by gangway, plank, or stepping onto the vessel.

"Temporarily assigned berth" means a berth that is allocated to a permittee by a valid temporary mooring permit for interim use of the facility.

"Temporary mooring" means mooring pursuant to a temporary use permit. Calculation of the allowable period for temporary mooring shall include cumulative days moored with and without a permit.

"Temporary permittee" means a person holding a valid temporary mooring permit for the interim use of a berth or offshore mooring.

"Tender" means a dinghy or a larger launch used to carry persons and supplies to and from large vessels.

"Territorial sea baseline" means the line from which the territorial sea is measured, which is

generally the low water line along the coasts including the coasts of islands and special closing lines drawn tangent to the headlands across the mouths of rivers, bays, inlets, and other similar indentations.

"Thrill craft" means any motorized vessel that falls into the category of personal watercraft, which:

- (1) Is generally less than thirteen feet in length as manufactured;
- (2) Is generally capable of exceeding a speed of twenty miles per hour;
- (3) Can be operated by a single operator, but may have the capacity to carry passengers while in operation; or
- (4) Is designed to provide similar operating performance as a personal watercraft through a combination of small size, power plant, and hull design.

The term includes, but is not limited to, a jet ski, waverunner, wet bike, surf jet, miniature speed boat, hovercraft, and every description of vessel which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind the vessel.

"Tow-in surfing" means utilizing a surfboard, often equipped with foot straps, to surf waves with the assistance of a thrill craft that is equipped with a rescue sled, bow tow-line, and a tow-in-rope.

"Transient vessel" means any vessel visiting the State for a period of less than ninety days.

"Ultralight or experimental float equipped aircraft" means an aircraft of light weight construction and limited range, generally carrying not more than two individuals, able to land on water surfaces using floats.

"Unassigned berth" means a berth that is not assigned to a permittee by a regular mooring permit.

"Underway" means the vessel is not at anchor, aground, or made fast to shore.

"Undocumented vessel" means any vessel which does not have a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Use permit" as used in these rules, means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore moorings, state ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2.

"Vacation" means a period spent away from home or business in travel or recreation.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes mopeds, devices moved by human power, or devices used exclusively upon stationary rails or tracks.

"Vessel" means all description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane.

"Vessel carrying passengers for hire" means any vessel which carries any person or persons for a valuable consideration that goes directly or indirectly to the owner, charterer, operator, agent, or any person who has an interest in the vessel.

"Vessel engaged in fishing" means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability.

"Vessel length" means the end-to-end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part of the bow to the aftermost part of the stern; provided, that hull platings, plankings, and extensions aside from the hull proper, such as a bowsprit, are not to be included in the measurement; provided further, that an open-type vessel or one with a cockpit shall be measured as if a complete deck existed at the upper level of the hull.



"Vessel length overall" means the distance between the fore-and-aft extremities of a vessel including hull platings, plankings and any extensions beyond the hull proper, such as bowsprit, boomkin, steering device, or other extensions.

"Vessel used as a place of principal habitation" means a vessel on which any person remains overnight ninety times or more in a calendar year while the vessel is moored in a state small boat harbor.

"Visiting vessel" means a vessel temporarily moored in a state small boat harbor while having a use permit applicable to a different state small boat harbor or other boating facility under the jurisdiction of the division.

"Water sledding" means the activity in which an individual is transported or carried over the surface of the water on an apparatus attached to a towline and towed by a vessel.

"Water sports equipment" means any equipment, contrivance, frame, or other device that one or more persons may wear, lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation, or sports, and not necessarily for transportation.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

"Water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256 to a destination or vessel located outside the small boat harbor boundary.

"Waterway marker" means any device designed to be placed in, or near, the water to convey an official message to a boat operator on matters which may affect health, safety, or well-being, except that such devices of the United States or an agency of the United States are excluded from the meaning of the definition.

"Wildlife" means any member of any non-domesticated species of the animal kingdom, and game mammals and game birds living in a wild and non-domesticated state, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. [Eff 2/24/94; am 4/27/02; am 6/16/03; am and comp 12/7/13; am 12/31/18; am and comp ]  
(Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)  
(Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§§13-230-9 to 13-230-19 (Reserved)

## SUBCHAPTER 2

### DETERMINATION OF RESIDENCY

**§13-230-20 Purpose.** The purpose of this subchapter is to provide a procedure whereby a determination of residence status shall be made for all persons who own a vessel moored in a state small boat harbor or who apply for such moorage to assure that they are assessed the proper fees and charges as established by these rules; to provide appeals mechanism for those persons who believe their residency classification is in error; and to provide sanctions for misrepresentation by a petitioner. [Eff 2/24/94; comp 12/7/13; comp ] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

**§13-230-21 REPEALED.** [R 12/31/18]

**§13-230-22 Twelve-month rule.** (a) Status as a Hawaii resident must be acquired, and not subsequently lost at least twelve months prior to the residence determination date to avoid payment of the nonresidence fee differential prescribed in section 200-34 Hawaii Revised Statutes. This twelve-month rule also applies to the person whose residency is determined by the fact of residency of another.

(b) While residency shall be lost if it is interrupted during the twelve months immediately preceding the residence determination date, resident status derived from two or more successive periods of domicile in Hawaii may be joined together to compute the twelve-month period. [Eff 2/24/94; am and comp 12/7/13] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

**§13-230-23 Indications of residence.** Because determination of residence in Hawaii requires a finding of subjective fact (intent to make a permanent home) as well as of objective fact (and physical presence), the following objective indications of a person's intent will be considered when determining the person's status. No single index is decisive.

- (1) Primary indications.
  - (A) Voter registration in Hawaii.
  - (B) Voting in Hawaii.
  - (C) Possession and use of Hawaii motor vehicle license plates.
  - (D) Payment of Hawaii personal income tax.
  - (E) Presence of spouse, children, and other close relatives in Hawaii.
- (2) Secondary indications.
  - (A) Membership in voluntary organizations in Hawaii.
  - (B) Licensing from the State for professional practice.
  - (C) Carrying on of a business or the holding of a position in Hawaii.
  - (D) Ownership of residential property or continuous letting of an apartment on a

lease basis in Hawaii. [Eff 2/24/94;  
comp 12/7/13; comp ]  
(Auth: HRS §§200-2, 200-4, 200-10)  
(Imp: HRS §§200-2, 200-4, 200-10)

**§13-230-24 Rules of construction.** The following rules of construction shall be applied in all cases:

- (1) Residence in Hawaii and residence in another place cannot be held simultaneously.
- (2) Presence in Hawaii primarily to attend an institution of higher learning does not create resident status.
- (3) Resident status, once acquired, will be lost by future voluntary actions of the resident inconsistent with such status. However, Hawaii residence will not be lost solely because of absence from the State while employed in the service of the United States, while engaged in navigation, or while a student at any institution of learning. [Eff 2/24/94; comp 12/7/13; comp ] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

**§13-230-25 Particular categories.** (a) Adults. The resident status of every adult shall be established by the adult's own acts and intentions and shall not be derived from any other person, except as specifically provided otherwise in these rules.

- (b) Minors.
  - (1) Unemancipated minor. The residence of an unemancipated minor is the residence of the minor's father, if living, or the residence of the minor's mother, if the father is deceased.
  - (2) Divorced parents. If the parents of an unemancipated minor are divorced, the minor's residence is that of the person to whom the minor's custody has been awarded by the court. If no award of custody has been

made, the minor's residence is that of the father. However, if the minor maintains the minor's primary abode with the parent not having legal custody, residence of the minor is determined by that parent with whom the minor's primary abode is maintained.

- (3) Separated parents. If the parents of an unemancipated minor are separated, without a divorce having been granted or custody award having been made, the minor's residence is that of the father if the minor is not living with either parent. If the minor maintains primary abode with a parent, the minor's residence is the residence of that parent.
- (4) Death of a parent who had custody. The residence of an unemancipated minor becomes that of the surviving parent upon the death of the parent who had the minor's custody.
- (5) Both parents deceased. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order. Upon court appointment of a guardian for the minor, the residence of the minor becomes that of the guardian.
- (6) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States Armed Forces, whose parents become residents of Hawaii, and who would reach majority before deriving Hawaiian residence from the minor's parents' new status, may be classified as a resident for fee purposes when the minor's parents have completed twelve consecutive months of residence; provided that such classification will be lost if actions inconsistent with resident status are taken after leaving such institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).

- (7) If an unemancipated minor's parents lose their Hawaii residence, the minor will be classified as a nonresident at the next residence determination date. However, if the parents' change of residence is due to obedience to active-duty military orders, the minor shall continue to pay only resident fees and charges as long as one of the minor's parents remain on active duty and in a Hawaii resident status.
- (8) Emancipated minors. An emancipated minor shall be considered an adult for purposes of residence hereunder. The following shall constitute indications of emancipation, no one of which is controlling:
  - (A) Financially independent or self-supporting.
  - (B) Subsistence not provided by parent or legal guardian.
  - (C) Prior military service.
  - (D) Other primary and secondary indications of residence enumerated under section 13-230-24.
  - (E) Any other conduct inconsistent with parental control and custody.
- (9) Hanai. A person may base the person's residency on that of other than the parent or legal guardian, provided that the relationship between the person and the person or persons other than the parent or legal guardian is that of "hanai".

(c) Aliens. In addition to all other requirements herein, an alien shall be classified as a resident only upon the alien's admission to the United States for permanent residence (immigration visa). Residence of a minor alien can only be derived from another person (e.g., a parent) when both that person and the minor achieve resident status.

(d) Military personnel. Service in the armed forces of the United States shall not of itself negate establishment of residence in Hawaii. For instance, a nonresident member of the United States Armed Forces

whose last duty station is in Hawaii and who does all other things necessary to establish a bona fide Hawaiian domicile, including discharge from the military in Hawaii, may be classified as a resident. In addition, a person who establishes a Hawaiian domicile but who enters the military service prior to the expiration of twelve months from the date of such establishment may add the period of the person's military service on to the former period to satisfy the twelve-month rule.

(e) Married persons and persons in other legal relationships. A married person or reciprocal beneficiary or civil union partner may establish resident status, either on the basis of indications of residence, or on the basis of the indications of residence of the person's spouse. However, the person must clearly state intent to make Hawaii the person's permanent residence. For purposes of the liveaboard fee, the person holding a principal habitation permit may rely on the residency indications of a reciprocal beneficiary who lives on board the vessel. [Eff 2/24/94; am and comp 12/7/13; am 12/31/18; comp ] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

### **§13-230-26 Determination of residence procedure.**

(a) These rules establish a fee structure in which nonstate residents in specified instances shall pay an application and permit fee differential. Therefore, any person seeking to be classified as a Hawaii resident for fee purposes shall, at the time of application for or prior to being issued a permit, complete and submit to the department a questionnaire provided by the department designed to elicit facts which will aid the department in determining the applicant's resident, nonresident, or Armed Forces status. The applicant shall answer all pertinent questions and shall attest to the truth of the answers with the applicant's signature. The department may also require the applicant to produce certified copies

of documents or other relevant proof as may be necessary for the determination of residency status.

(b) A nonresident who believes that the nonresident's residency status has changed so that the nonresident has achieved Hawaii residency status may seek reclassification as a resident by submitting a completed questionnaire as prescribed in subsection (a) on or following the date the nonresident believes that the change in residency status occurred. [Eff 2/24/94; comp 12/7/13; comp ] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

**§13-230-27 Permittee required to report change of residence.** A resident permittee who subsequently takes up residence outside of the State and continues to moor the permittee's vessel in a state small boat harbor shall advise the department in writing within seven days of the permittee's change of residence. In such a case, nonresident fees and charges shall be payable following the change of residence. A permittee who intends to assume residence outside of the state or relocate to another island yet retain a permitted vessel and assigned mooring shall cause all applicable harbor use permits to be revised to identify the individual that agrees to assume the vessel owner's obligations under the use permit and these rules during the period of the permittee's absence. This individual shall reside on the same island that the vessel is moored. [Eff 2/24/94; am and comp 12/7/13; comp ] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

**§13-230-28 Appeals.** (a) Classification as a nonresident by the department may be appealed by the aggrieved person by filing a petition for a declaratory ruling in accordance with section 13-1-27.

(b) No petition for appeal shall be accepted by the department unless:



- (1) The petitioner has paid the nonresident fees and fees and charges and filing fee for residency status appeal.
- (2) The petitioner has submitted with the petition documentary evidence tending to establish that the petitioner has, for a period of twelve months prior to the residency determination date, been physically present in the State of Hawaii with the intent to make Hawaii the petitioner's home. The documentary evidence to be furnished shall support the claim of residency by establishing acceptable indicia of residency as provided under section 13-230-23.
- (3) The petition is filed with the department within thirty days following receipt by certified mail, return receipt requested, or personal delivery, as the case may be, of the department's determination of the petitioner's nonresident status.
- (c) The petition shall be signed by the petitioner. The petition shall be filed at any division of boating and ocean recreation district office on or before the thirtieth day following receipt by certified mail, return receipt requested or personal delivery, of the department's determination of the petitioner's nonresident status. The district manager receiving the appeal shall promptly forward it to the administrator of the division of boating and ocean recreation.
- (d) The administrator of the division of boating and ocean recreation shall promptly review any petition filed with the department and take appropriate action as follows within fifteen days after the filing of the petition:
  - (1) Return the petition to the concerned district manager if the administrator of the division of boating and ocean recreation determines the petition should not have been accepted under subsection (b) with an explanation of the basis for rejection, a

- copy of which shall be forwarded to the petitioner;
- (2) Reverse the department's prior determination that the petitioner is a nonresident if the administrator of the division of boating and ocean recreation determines that the petitioner has submitted adequate proof that the petitioner is a resident of the State of Hawaii; or
  - (3) Forward the petition to the chairperson for a declaratory ruling in accordance with section 13-1-27.
- (e) The nonstate resident fee differential and filing fee for residency status appeal shall be promptly refunded if the department reverses the determination of nonresident status, as provided in section 13-234-24. [Eff 2/24/94; am and comp 12/7/13; comp ] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

**§13-230-29 Misrepresentation.** It is a violation of these rules for any person to misrepresent any fact upon any form or document intended for or used in determination of resident status for fees and charges purposes or for any person to misrepresent any fact at an appellant hearing hereunder." [Eff 2/24/94; am and comp 12/7/13; comp ] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-31, Hawaii Administrative Rules, shall take

effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on (date), and filed with the Office of the Lieutenant Governor.

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DAWN N. S. CHANG  
Chairperson, Board of Land  
and Natural Resources

APPROVED AS TO FORM:

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Deputy Attorney General

### **III. OLD BUSINESS**

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Chapter 13-257, **Day-Use Mooring Rules**, promulgated by DLNR

Amendment and Compilation of Chapter 13-257  
Hawaii Administrative Rules

INSERT DATE OF ADOPTION

1. Chapter 13-257, Hawaii Administrative Rules,  
entitled "Day-Use Mooring Rules", is amended and  
compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 3

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 257

DAY-USE MOORING RULES

Subchapter 1 General Provisions

§13-257-1	Purpose and scope
§13-257-2	Day-use mooring permit
§13-257-3	Day-use mooring buoy limitations
§13-257-4	Anchoring restrictions
§13-257-5	Day-use mooring installation
§13-257-6	Day-use mooring locations
§13-257-7	Rafting prohibited
§13-257-8	Liability
§13-257-9	Safety and enforcement

§§13-257-10 to 13-257-15 (Reserved)

Subchapter 2 Day-Use Moorings, Island of Hawai'i

§§13-257-16 to 13-257-24 Repealed

§§13-257-25 to 13-257-35 (Reserved)

Subchapter 3 Day-Use Moorings, Island of Maui

§§13-257-36 to 13-257-50 (Reserved)

Subchapter 4 Day-Use Mooring Area, Molokini Shoal  
Marine Life Conservation District

§13-257-51 Molokini day-use mooring area

§13-257-52 Commercial-use restrictions

§13-257-53 Commercial day-use mooring permit fee

§13-257-54 Recreational vessel use of Molokini day-  
use moorings

§13-257-55 Speed Restrictions

§13-257-56 Anchoring restrictions

§§13-257-57 to 13-257-60 (Reserved)

Subchapter 5 Day-Use Moorings, Island of Lāna'i

§§13-257-61 to 13-257-70 (Reserved)

Subchapter 6 Day-Use Moorings, Island of Moloka'i

§§13-257-71 to 13-257-80 (Reserved)

Subchapter 7 Day-Use Moorings, Island of O'ahu

§§13-257-81 to 13-257-90 (Reserved)

Subchapter 8 Day-Use Moorings, Island of Kaua'i  
§§13-257-91 to 13-257-120 (Reserved)

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§13-257-1 Purpose and scope.** (a) The purpose of ~~[the day-use]~~ day-use mooring rules and zones is to reduce damage to coral and other marine life as a result of continuous use of anchors by commercial and recreational vessels in zones of high dive and mooring activity statewide.

(b) ~~[The rules describe the]~~ This chapter contains provisions for mooring at state [day-use] day-use mooring [buoys and the zones where the buoys are located.] buoys. [Eff 9/16/95; am and comp  
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10)  
(Imp: HRS §200-10)

**§13-257-2 ~~[Day-use]~~ Day-use mooring permit.** An owner or operator of a vessel using a ~~[day-use]~~ state day-use mooring [established under] buoy installed pursuant to this chapter shall not be required to apply for a ~~[day-use]~~ day-use mooring permit from the department, except as otherwise provided in this chapter. ~~[Any use of a state day use mooring shall be at the sole risk of the owner or operator of the vessel using the mooring.]~~ [Eff 9/16/95; am and comp  
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§13-257-3 ~~[Time limit.]~~ State day-use mooring buoy limitations.** (a) ~~[The time limit for use of a~~

~~day use mooring buoy by any one vessel]~~ A vessel using a state day-use mooring buoy shall not exceed two and one half hours [when another vessel is waiting for the use of that mooring buoy,] of use, except as provided by section 13-37-3 for the [old Kona airport marine life conservation district.] Old Kona Airport Marine Life Conservation District, Hawai'i.

(b) Overnight mooring is ~~[prohibited except in ease of emergency or by enforcement or rescue craft.] prohibited.~~ [Eff 9/16/95; am and comp  
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§13-257-4 Anchoring restrictions.** ~~[Anchoring]~~  
Unless otherwise provided in this chapter, anchoring is allowed only in areas of sand, rock, or rubble bottom types where no live corals exist; provided further that anchoring is prohibited within one hundred yards of any [day use mooring buoy, except as otherwise provided in these rules. Anchoring elsewhere in a day use mooring zone is permitted in areas of sand, rock, or rubble bottom types where no live corals exist.] state day-use mooring buoy. [Eff 9/16/95; am and comp  
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§13-257-5 ~~[Day use]~~ Day-use mooring buoy installation.** (a) Design guidelines for ~~[a typical day use]~~ state day-use mooring buoy installation is as shown on Exhibits "DM-OO", "DM-OO-A" and "DM-OO-B", dated December 16, 1994, located at the end of this subchapter. The department shall adhere to the design guidelines specified in this subsection, and the Board shall have the discretion to approve mooring buoy designs that differ from the guidelines in this section if the Board finds that:



- (1) A specific design offers environmental or structural advantages over those specified in the day-use mooring buoy guidelines; and
  - (2) Such environmental or structural advantages outweigh any negative impacts to aquatic resources.
  - (b) For each state day-use mooring buoy site, the department shall develop a day-use mooring buoy site proposal, subject to approval and modification by the Board, which shall consider:
    - (1) Public input;
    - (2) Impact upon aquatic resources;
    - (3) Use patterns with respect to the proposed site; and
    - (4) Any other information relevant to site selection and mooring buoy installation.
- [Eff 9/16/95; am and comp ]  
 (Auth: HRS §§200-2, 200-3, 200-4, 200-10)  
 (Imp: HRS §200-10)

**§13-257-6 Day-use mooring buoy locations.** The department shall maintain a listing of sanctioned day-use mooring buoys installed in waters of the State. The listing shall be available on the division's website, may be maintained in print form, and shall provide GPS coordinates for the location of each mooring buoy. The department shall make a reasonable effort to ensure that the GPS coordinates on the listing provide an accurate location for each state-owned day-use mooring buoy. [Eff ]  
 (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§13-257-7 Rafting prohibited.** Rafting of vessels from any day-use mooring buoys is prohibited. [Eff ] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§13-257-8 Liability.** By using a state day-use mooring buoy, a vessel owner or operator assumes the sole risk of using the mooring. The State assumes no liability or responsibility associated with the use of any day-use mooring buoys, except as otherwise provided in this chapter. [Eff  
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§13-257-9 Safety and enforcement.** The restrictions cited in this chapter do not apply to the following:

- (1) Emergency situations;
- (2) Law enforcement, patrol, or rescue craft;
- (3) Department vessels and personnel performing official duties;
- (4) Vessels and personnel performing authorized homeland security training operations; and
- (5) The U.S. Coast Guard. [Eff  
(Auth: HRS §§200-2, 200-3, 200-4, 200-10)  
(Imp: HRS §§200-2, 200-3, 200-10)]

**§§13-257-10 to 13-257-15 (Reserved)**

## SUBCHAPTER 2

[~~DAY-USE MOORING,~~] DAY-USE MOORINGS, ISLAND OF  
[~~HAWAII~~] HAWAI'I

~~[§13-257-16 Kaiholena to Malae Point day use mooring zone. (a) Kaiholena to Malae Point day use mooring zone is encompassed by the boundaries as shown~~

~~on Exhibit "DM-01" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Malae Point and measured by azimuth clockwise from True South; 050 degrees for a distance of four hundred seventy-five feet; 161 degrees for a distance of four thousand eight hundred fifty feet; 150 degrees for a distance of two thousand feet; 167.5 degrees for a distance of seven thousand three hundred thirty feet; 246.5 degrees to the high water mark at the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-01" located at a point on the water measured by azimuth clockwise from True South, 152.5 degrees for a distance of four thousand four hundred fifty feet from the southwest tip of Keaweula Bay.~~
- ~~(2) Buoy "DM-02" located at a point on the water measured by azimuth clockwise from True South, 143 degrees for a distance of two thousand eight hundred ten feet from the southwest tip of Keaweula Bay.~~
- ~~(3) Buoy "DM-03" located at a point on the water measured by azimuth clockwise from True South, 154 degrees for a distance of five hundred ninety feet from the southwest tip of Keaweula Bay.] [Eff 9/16/95; R  
] (Auth: HRS §§200- 2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-17 Malae Point to Kaiopae Point day use mooring zone. (a) Malae Point to Kaiopae Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-02" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kaiopae Point and measured by azimuth clockwise from True South, 056 degrees for a distance of six hundred ten feet; 137 degrees for a distance of six thousand five hundred eighty feet; 151 degrees for a distance of forty thousand six hundred feet; 148 degrees for a distance of six thousand nine hundred ninety-five feet; then in a straight line to the high water mark at the Malae Point shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-04" located at a point on the water measured by azimuth clockwise from True South, 354 degrees for a distance of one thousand feet from the northwest tip of Kalala Gulch Cove.~~
- ~~(2) Buoy "DM-05" located at a point on the water measured by azimuth clockwise from True South, 333 degrees for a distance of two thousand six hundred feet from the northwest tip of Kalala Gulch Cove.~~
- ~~(3) Buoy "DM-06" located at a point on the water measured by azimuth clockwise from True South, 113.5 degrees for a distance of one thousand one hundred feet from the southeast tip of Kamilo Gulch Cove.~~
- ~~(4) Buoy "DM-07" located at a point on the water measured by azimuth clockwise from True South, 001 degrees for a distance of one thousand one hundred feet from the southeast tip of Kamilo Gulch Cove.~~
- ~~(5) Buoy "DM-08" located at a point on the water measured by azimuth clockwise from True South, 314 degrees for a distance of two thousand six hundred fifty feet from the southeast tip of Kamilo Gulch Cove.~~
- ~~(6) Buoy "DM-09" located at a point on the water measured by azimuth clockwise from True South, 095 degrees for a distance of one~~

~~thousand one hundred ten feet from the northwest tip of Keawewai Gulch Cove.] [Eff 9/16/95; R ] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-18 Pauoa Bay to Honokaope Bay day use mooring zone. (a) Pauoa Bay to Honokaope Bay day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-03" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Lae o Panipou Point and measured by azimuth clockwise from True South; 124 degrees for a distance of one thousand two hundred feet; 060 degrees for a distance of two thousand nine hundred twenty feet; 044 degrees for a distance of seven thousand two hundred fifty feet; then in a straight line to the high water mark at the Anachoomalu "trig" shoreline; then along the shoreline to the point of the beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

~~(1) Buoy "DM-10" located at a point on the water measured by azimuth clockwise from True South, 081.5 degrees for a distance of one thousand one hundred fifty feet from Keanapukalua Point.~~

~~(2) Buoy "DM-11" located at a point on the water measured by azimuth clockwise from True South, 057 degrees for a distance of two thousand feet from Keanapukalu Point.] [Eff 9/16/95; R ] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-19 Kaauau Point to Kapalaoa Point day use mooring zone. (a) Kaauau Point to Kapalaoa Point~~

~~day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-04" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kaaauau Point and measured by azimuth clockwise from True South; 053 degrees for a distance of four thousand one hundred eighty feet; then in a straight line to the high water mark at Kapalaoa Point shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoy is within the mooring zone described in this section.~~

~~(1) Buoy "DM-12" located at a point on the water measured by azimuth clockwise from True South, 219 degrees for a distance of three thousand fifty feet from Kapalaoa Point.]~~

~~[Eff 9/16/95; R ] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-20 Makako Bay to Kalihi Point day use mooring zone. (a) Makako Bay to Kalihi Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-05" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kalihi Point and measured by azimuth clockwise from True South; 062 degrees for a distance of five hundred fifty feet; 150 degrees for a distance of two thousand nine hundred seventy five feet; 012.5 degrees for a distance of one thousand three hundred twenty five feet; 040 degrees for a distance of three thousand four hundred feet; 270 degrees to the high water mark of the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~



~~thousand six hundred twenty-five feet from Puhili Point.~~

- ~~(3) Buoy "DM-17" located at a point on the water measured by azimuth clockwise from True South, 152 degrees for a distance of one thousand one hundred fifty feet from Puhili Point.~~
- ~~(4) Buoy "DM-18" located at a point on the water measured by azimuth clockwise from True South, 002 degrees for a distance of nine hundred eighty feet from Puhili Point.~~
- ~~(5) Buoy "DM-19" located at a point on the water measured by azimuth clockwise from True South, 121 degrees for a distance of one thousand six hundred feet from Wawahiwaa Point (Heiau).~~
- ~~(6) Buoy "DM-20" located at a point on the water measured by azimuth clockwise from True South, 073 degrees for a distance of seven hundred fifty feet from Wawahiwaa Point (Heiau).~~
- ~~(7) Buoy "DM-21" located at a point on the water measured by azimuth clockwise from True South, 005 degrees for a distance of seven hundred fifty feet from Wawahiwaa Point (Heiau).~~
- ~~(8) Buoy "DM-22" located at a point on the water measured by azimuth clockwise from True South, 312 degrees for a distance of one thousand four hundred fifty feet from Wawahiwaa Point (Heiau).~~
- ~~(9) Buoy "DM-23" located at a point on the water measured by azimuth clockwise from True South, 143 degrees for a distance of one thousand seven hundred feet from Kaloko Point.~~
- ~~(10) Buoy "DM-24" located at a point on the water measured by azimuth clockwise from True South, 069 degrees for a distance of one thousand one hundred twenty-five feet from Kaloko Point.] [Eff 9/16/95; R~~



] (Auth: HRS §§200-2, 200-3, 200-4,  
200-10) (Imp: HRS §200-10)

~~[§13-257-22 Kaiwi Point to Kukailimoku Point day  
use mooring zone. (a) Kaiwi Point to Kukailimoku  
Point day use mooring zone is encompassed by the  
boundaries as shown on Exhibit "DM-07" dated November  
15, 1990, located at the end of this subchapter and  
described as follows:~~

~~Beginning at a point at the high water mark  
at the tip of Kukailimoku Point and measured by  
azimuth clockwise from True South; 000 degrees  
for a distance of nine hundred fifty feet; 117.5  
degrees for a distance of seven thousand three  
hundred eighty feet; 099 degrees for a distance  
of two thousand five hundred feet; 140 degrees  
for a distance of three thousand eighty feet; 159  
degrees for a distance of one thousand nine  
hundred feet; 270 degrees to the high water mark  
of the shoreline; then along the shoreline to the  
point of beginning.~~

~~(b) The following buoys are within the mooring  
zone described in this section.~~

- ~~(1) Buoy "DM-25" located at a point on the water  
measured by azimuth clockwise from True  
South, 001 degrees for a distance of seven  
hundred feet from Kaiwi Point.~~
- ~~(2) Buoy "DM-26" located at a point on the water  
measured by azimuth clockwise from True  
South, 351 degrees for a distance of one  
thousand six hundred ninety feet from Kaiwi  
Point.~~
- ~~(3) Buoy "DM-27" located at a point on the water  
measured by azimuth clockwise from True  
South, 115 degrees for a distance of one  
thousand five hundred fifty feet from  
Keahuolu Point.~~
- ~~(4) Buoy "DM-28" located at a point on the water  
measured by azimuth clockwise from True~~

~~South, 010 degrees for a distance of five hundred feet from Keahuolu Point.~~

- ~~(5) Buoy "DM-29" located at a point on the water measured by azimuth clockwise from True south, 288 degrees for a distance of one thousand three hundred feet from Keahuolu Point.~~
- ~~(6) Buoy "DM-30" located at a point on the water measured by azimuth clockwise from True South, 293 degrees for a distance of three thousand three hundred eighty feet from Keahuolu Point.~~
- ~~(7) Buoy "DM-31" located at a point on the water measured by azimuth clockwise from True south, 113 degrees for a distance of four thousand three hundred ninety feet from Kukailimoku Point.~~
- ~~(8) Buoy "DM-32" located at a point on the water measured by azimuth clockwise from True South, 107 degrees for a distance of two thousand three hundred fifty feet from Kukailimoku Point.~~
- ~~(9) Buoy "DM-33" located at a point on the water measured by azimuth clockwise from True South, 039 degrees for a distance of six hundred feet from Kukailimoku Point.] [Eff 9/16/95; R ] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-23 Kuamoo Bay to Paaao Bay day use mooring zone. (a) Kuamoo Bay to Paaao Bay day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-08" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the Keauhou Coast "trig station" and measured by azimuth clockwise from True South; 090 degrees for a distance of eight hundred thirty feet; 335 degrees for a distance of eight thousand four~~

~~hundred feet; 270 degrees to the shoreline of the northwest tip of Paaao Bay; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-34" located at a point on the water measured by azimuth clockwise from True South, 025 degrees for a distance of eight hundred fifteen feet from the Keauhou Coast "trig station"~~
- ~~(2) Buoy "DM-35" located at a point on the water measured by azimuth clockwise from True South, 087 degrees for a distance of one thousand one hundred feet from Kalanui Point.~~
- ~~(3) Buoy "DM-36" located at a point on the water measured by azimuth clockwise from True South, 073 degrees for a distance of seven hundred feet from Kuamoo Point.~~
- ~~(4) Buoy "DM-37" located at a point on the water measured by azimuth clockwise from True South, 115 degrees for a distance of one thousand seventy-five feet from Leinokano Point.] [Eff 9/16/95; R ]~~  
~~(Auth: HRS §§200-2, 200-3, 200-4, 200-10)~~  
~~(Imp: HRS §200-10)~~

~~[§13-257-24 Paaao Bay to Cook Point day use mooring zone. (a) Paaao Bay to Cook Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-09" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the northwest tip of Paaao bay and measured by azimuth clockwise from True South; 090 degrees for a distance of one thousand seventy-five feet; 015.5 degrees for a distance of five thousand nine hundred fifty-five feet; 329 degrees for a distance of eight thousand five hundred fifty feet; 009 degrees for a distance of three~~

~~thousand three hundred feet; 335 degrees for a distance of one thousand nine hundred feet; 295 degrees for a distance of four thousand six hundred ninety feet; 213 degrees to the high water mark at Cook Point; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-38" located at a point on the water measured by azimuth clockwise from True South, 156 degrees for a distance of nine hundred eighty feet from Paaoao Point.~~
- ~~(2) Buoy "DM-39" located at a point on the water measured by azimuth clockwise from True South, 090 degrees for a distance of eight hundred feet from Paaoao Point.~~
- ~~(3) Buoy "DM-40" located at a point on the water measured by azimuth clockwise from True South, 155 degrees for a distance of eight hundred feet from Kekeiwaha Point.~~
- ~~(4) Buoy "DM-41" located at a point on the water measured by azimuth clockwise from True South, 069 degrees for a distance of seven hundred fifty feet from Keikiwaha Point.~~
- ~~(5) Buoy "DM-42" located at a point on the water measured by azimuth clockwise from True South, 130 degrees for a distance of two thousand seven hundred ten feet from the Puu Ohau "trig station".~~
- ~~(6) Buoy "DM-43" located at a point on the water measured by azimuth clockwise from True South, 075 degrees for a distance of one thousand six hundred seventy five feet from the Puu Ohau "trig station".~~
- ~~(7) Buoy "DM-44" located at a point on the water measured by azimuth clockwise from True South, 000 degrees for a distance of two thousand one hundred feet from the Keauhou Coast "trig station".~~
- ~~(8) Buoy "DM-45" located at a point on the water measured by azimuth clockwise from True South, 181 degrees for a distance of two~~

~~thousand nine hundred ninety feet from  
Keawekaheha Point.~~

- (9) ~~Buoy "DM-46" located at a point on the water  
measured by azimuth clockwise from True  
South, 168 degrees for a distance of one  
thousand three hundred fifty feet from  
Keawekaheha Point.] [Eff 9/16/95; R  
] (Auth: HRS §§200-2, 200-3, 200-  
4, 200-10) (Imp: HRS §200-10)~~

**§§13-257-25 to 13-257-35 (Reserved)**

SUBCHAPTER 3

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF MAUI

**§§13-257-36 to 13-257-50 (Reserved)**

SUBCHAPTER 4

~~[DAY-USE]~~ DAY-USE MOORING AREA, MOLOKINI SHOAL MARINE  
LIFE CONSERVATION DISTRICT

**§13-257-51 Molokini Island Day-Use Mooring Area.** The boundary of the Molokini Island Day-Use Mooring Area is contiguous with the boundary of Subzone A of the Molokini Shoal Marine Life Conservation District, as described in section 13-31-2, and as shown on ~~[Exhibit "DM-10",]~~ Exhibit A, entitled "Map of Molokini Shoal Marine Life Conservation District, Maui", dated [March 3, 1994,] June 24, 2019, located at the end of this subchapter and described as follows:

Beginning at a point at the high water mark  
~~[at Pahe'e o Lono Point; then in a straight line~~  
~~to the end of the shoal at the northwest point of~~  
~~Molokini island; then in a counter-clockwise~~  
~~direction along the shoreline of Molokini island]~~  
of Lalilali Point, then along the high water mark  
of the northern shoreline eastward until Pahe'e o  
Lono Point, then west along a straight line to  
the end of the submerged ridge (shoal) extending  
from Lalilali Point, then along the top of the  
shoal back to the point of beginning. [Eff  
9/16/95; am and comp ]  
(Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp:  
HRS §200-10)

**§13-257-52 Commercial use restrictions.** (a) No vessel shall use a ~~[day-use]~~ state day-use mooring for commercial purposes unless the owner has been issued a marine life conservation district use permit by the department pursuant to section 13-31-5, as evidenced by its inclusion as an addendum to a commercial vessel use permit for the use of state boating facilities issued in accordance with section 13-231-57, or a commercial vessel registration issued in accordance with section 13-256-4 for that vessel.

(b) ~~[Mooring zone "A" is designated for use by commercial vessels carrying twelve or more passengers. Mooring zone "B" is designated for use by commercial vessels carrying less than twelve passengers.]~~ The use of any one particular mooring shall be on a first-come, first-served basis. ~~[Mooring zones "A" and "B" as shown on exhibit "DM-10" located at the end of this subchapter are generalized locations intended to reflect current mooring practices and are subject to revision, pending development of a final mooring plan prior to installation of permanent moorings.]~~

(c) ~~The department may authorize the owner of a commercial vessel not having a marine life conservation district use permit occasional or infrequent use of the day use moorings, not to exceed eight times a year, when application is made and~~

~~approved not less than seven days in advance of the date of intended use.]~~ [Eff 9/16/95; am and comp  
] (Auth: HRS §§200-2, 200-3, 200-4,  
200-10) (Imp: HRS §200-10)

**§13-257-53 Commercial ~~[day-use]~~ day-use mooring ~~[permit]~~ fee.** ~~[The commercial day-use mooring permit]~~  
Beginning January 1, 2024, the fee for [a] commercial use of a Molokini ~~[day-use]~~ day-use mooring [shall be the greater of \$100] is \$200 per month [or two per cent of gross receipts], provided that this fee [shall be] is waived for commercial operators who are presently paying [commercial vessel user fees for the use of state boating facilities in accordance with section 13-234-5.] the ocean stewardship user fee required by section 187A-52, Hawaii Revised Statutes. ~~[This fee shall be in addition to the commercial use permit fee required under section 13-31-5.]~~ This fee is in addition to the commercial use permit fee required under section 13-31-5. and any commercial fees charged pursuant to chapter 13-234. [Eff 9/16/95; am and comp  
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§13-257-54 Recreational vessel use of Molokini day use moorings.** ~~[Mooring zone "C" is designated for primary use by recreational vessels, and is shown on exhibit "DM-10" located at the end of this subchapter.]~~ Recreational vessels shall have exclusive use of designated recreational state day-use moorings. All designated recreational state day-use moorings shall be indicated with a surface float. Recreational vessels may also use vacant commercial state day-use moorings [located in zones "A" and "B"] except [during the period] from [8:30 a.m. to 11:30 a.m.] 7:30 a.m. to 9:30 a.m. [Eff 9/16/95; am and comp  
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§13-257-55 Speed Restrictions.** No vessel shall operate at a speed in excess of "slow-no wake" within the ~~[Subzone A, as defined in section 13-257-51 and shown on exhibit "DM-10".]~~ Molokini Island Day-Use Mooring Area. [Eff 9/16/95; am and comp ] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§13-257-56 Anchoring restrictions.** ~~[(a)]~~  
Anchoring is prohibited within the Molokini ~~[island day use mooring area, provided that anchoring is permitted within the designated area at locations of sand, rock, or rubble bottom types where no live eorals exist until such time as new day use moorings are installed.~~

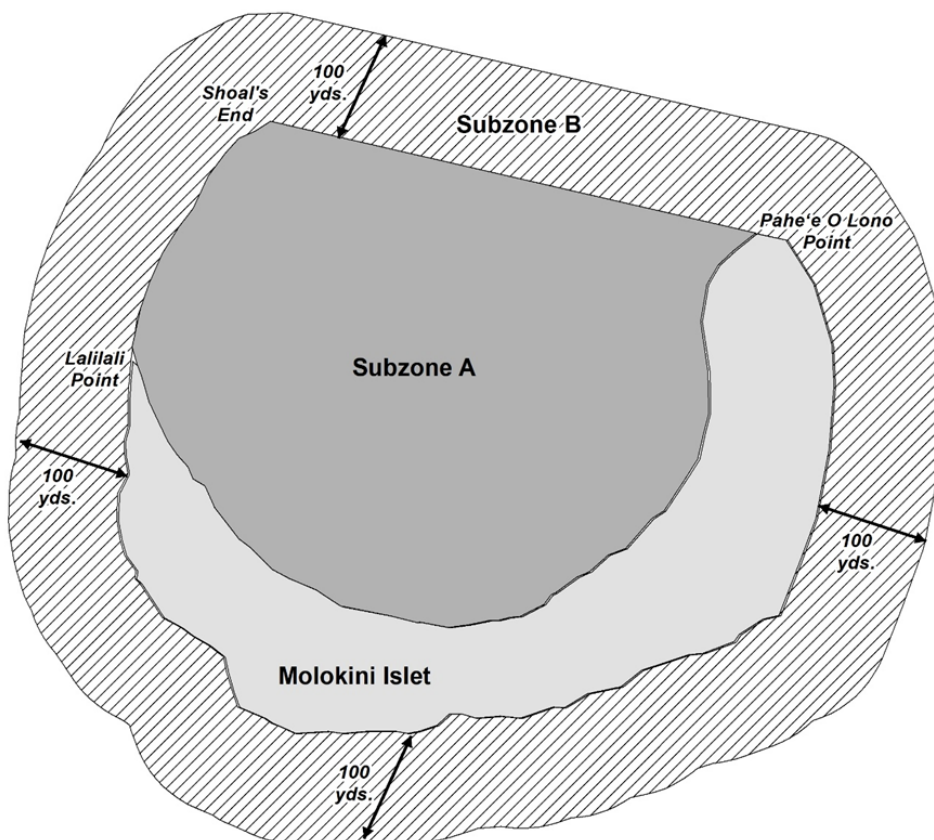
~~(b) Anchoring is prohibited within Subzone B of the Molokini shoal marine life conservation district.]~~ Island Day-Use Mooring Area. [Eff 9/16/95; am and comp ] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

**§§13-257-57 to 13-257-60 (Reserved)**



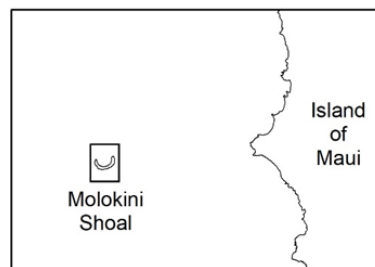
**Exhibit A. Map of Molokini Shoal  
Marine Life Conservation District, Maui  
June 24, 2019**

0 0.05 0.1 Miles



**Legend**

- Molokini Shoal  
MLCD: Zone A
- Molokini Shoal  
MLCD: Zone B



SUBCHAPTER 5

[~~DAY-USE~~] DAY-USE MOORINGS, ISLAND OF [~~LANAI~~] LĀNA`I

**§§13-257-61 to 13-257-70 (Reserved)**

SUBCHAPTER 6

[~~DAY-USE~~] DAY-USE MOORINGS, ISLAND OF [~~MOLOKAI~~]  
MOLOKA`I

**§§13-257-71 to 13-257-80 (Reserved)**

SUBCHAPTER 7

[~~DAY-USE~~] DAY-USE MOORINGS, ISLAND OF [~~OAHU~~] O`AHU

**§§13-257-81 to 13-257-90 (Reserved)**

SUBCHAPTER 8

[~~DAY-USE~~] DAY-USE MOORINGS, ISLAND OF [~~KAUAI~~] KAUA`I

**§§13-257-91 to 13-257-120 (Reserved) "**

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. The amendments to and compilation of chapter 13-257, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
DAWN N. S. CHANG  
Chairperson,  
Board of Land and Natural  
Resources

APPROVED FOR PUBLIC HEARING:

\_\_\_\_\_  
Deputy Attorney General

## **IV. NEW BUSINESS**

A. Discussion and Action on Proposed  
Amendments to HAR Title 17 Chapter 799,  
**Preschool Open Doors Program**,  
promulgated by Department of Human  
Services (DHS)

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD  
(Hawaii Revised Statutes §201M-2)

Date: 9/26/2023

Department or Agency: Human Services

Administrative Rule Title and Chapter: 17-799

Chapter Name: Preschool Open Doors Program

Contact Person/Title: Scott Nakasone / Assistant Division Administrator

E-mail: snakasone2@dhs.hawaii.gov Phone: 808-586-7054

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☒ No

If "Yes," provide details: \_\_\_\_\_

I. Rule Description:

☐ New ☐ Repeal ☒ Amendment ☒ Compilation

II. Will the proposed rule(s) affect small business?

☒ Yes ☐ No

(If "No," no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☒ No

(If "Yes" no need to submit this form.)

\* \* \*

**If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:**

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

Proposed section 17-799-12.1 requires preschools that are selected by parents for child care subsidy be accredited by July 1, 2023. If these preschools do not attain accreditation then the parent that chooses to send their child to the non-accredited preschool would not be able to receive a child care subsidy payment unless they select an accredited preschool.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

See attached.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

N/A

- b. Amount of the proposed fee or fine and the percentage increase.

N/A

- c. Reason for the new or increased fee or fine.

N/A

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

N/A

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

N/A

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

See attached.

The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

This rule section is to implement legislation passed and adopted in Act 169, 2023 Legislative Session.

Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

Preschools will still need to comply with this requirement. The Department has been tasked with implementing assistance to preschools to pursue accreditation that includes limited funding that could be used towards to cover some costs.

How the agency involved small business in the development of the proposed rules.

The proposed rules in large addresses concerns that the early child care community has expressed in various meetings and setting regarding the Preschool Open Doors program such as increasing the income eligibility levels, increase subsidy payment amounts, and reduce parent co-pay. These changes were presented to the LG's Ready Keiki working group that consisted of various representatives from the preschool community and businesses. The reaction was very positive toward the proposed changes.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Yes. As mentioned above changes to the rules include concerns that the early child care community has expressed in various meetings and setting regarding the Preschool Open Doors program such as increasing the income eligibility levels, increase subsidy payment amounts, and reduce parent co-pay.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

No.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.  
N/A
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.  
N/A
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.  
N/A
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.  
N/A
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.  
N/A

\* \* \*

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>



Pre-Public Hearing Small Business Impact Statement  
Chapter 17-799, Preschool Open Doors Program

2. As an example, estimated average cost for initial fees to obtain NAEYC accredited status is \$4,155. Costs varies depending on the licensed capacity of the group child care center. The example does not include improvement costs that a preschool may incur to meet accreditation standards, such as additional equipment or staff training.

The 2023 legislative session introduced SB 239, that was adopted and signed by the Governor as Act 169, that appropriate \$2,102,100 for the Department to implement an accreditation technical assistance for unaccredited preschools to become accredited. This technical assistance would also include making funds available to the unaccredited preschools to cover costs related to accreditation.

4. Proposed Section 17-799-12.1 proposes allowing for extensions on a case-by-case to preschools to work towards accreditation while still approving the child care payments for families that choose to use the preschool for their child's care.

Proposed section 17-799-13 will increase the amount of the maximum monthly payment amount for an eligible child to be \$1,200 (unaccredited) or \$1,500 (accredited).

The 2023 legislature appropriated an additional \$27.2 million dollars towards POD subsidies for the 2025 State fiscal year. These additional funds will raise the amount appropriated for POD subsidies from \$11.6 million annually to \$38.8 million annually starting State fiscal year 2025. With this increase in funding, it is imperative that the Department fully expend funds to ensure the maximum number of children are served.

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

NOTICE OF PUBLIC HEARING

Pursuant to Sections 91-3 and 92-41, Hawaii Revised Statutes, notice is hereby given that the Department of Human Services will hold a public hearing to consider the amending and compilation of Hawaii Administrative Rules (HAR) Chapter 17-799, Preschool Open Doors (POD) Program, for the Benefit, Employment and Support Services Division for the purpose of program expansion, streamlining and conforming to state statutes. A brief description of the proposed rule amendments are listed below:

Subchapter 1 General Provisions

Adds a new section, §17-799-12.1, Accreditation requirements.

Adds a new section, §17-799-13.1, Method of computing family unit's co-payment.

§17-799-1 Purpose

Amends the potential number of years a child could receive Preschool Open Doors child care payments from up to one year to up to two years.

§17-799 Definitions

Adds, deletes, and amends terms used in this Chapter.

§17-799-4 Scope

Deletes the reference that the chapter is effective with the application period for child care payments for the State fiscal year 2015 services.

§17-799-5 Application period

Amends the referenced sections as it relates to how applications will be processed and prioritized.

§17-799-7 Priority of applications

Amends the section to add to the priority of application priority ranking 3-year-old children and monthly gross income would be compared to 300% of the federal poverty guidelines for a family of the same size. Both amendments would become effective for the 2024 program year.

§17-799-8 Family unit eligibility requirements

Clarifies that a family may be able to receive child care subsidy under this chapter and under chapter 17-798.3 for a different provider and a different type of care than the POD preschool provider; establishes as the income eligibility standard effective the 2024 program year to be 300% of the federal poverty guidelines for a family of the same size which is annually updated on January 1 to determine eligibility for the upcoming program year; and establishes that a caretaker who is a foster parent licensed by the Department, or an organization under the

authority of the Department, are not subject to income limits or co-pay requirements for the applying foster child.

#### §17-799-9 Income considered in eligibility determination

Clarifies that when determining monthly income, semi-monthly income shall be calculated by multiplying the anticipated semi-monthly income by 2. Clarifies that child support includes support or maintenance for or on behalf of a son or daughter who is over eighteen years of age. Clarifies that for farm self-employed income, items such as depreciation, personal, business, and entertainment expenses, transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, and state and federal taxes paid shall not be deducted as business expenses.

#### §17-799-11 Program enrollment

Amends the referenced section as it relates to how applicants are prioritized.

#### §17-799-12 Program qualifications for preschools

Clarifies that center-based exempt providers considered for the program are subject to requirements under chapter 17-800. Adds that all providers shall be accredited pursuant to section 17-799-12.1.

##### §17-799-12.1 Accreditation requirements

Establishes that all preschools that accept enrollment of a child eligible for the program must be accredited within seven years and provides that existing preschools must start the accreditation process by July 1, 2029, and be accredited by July 1, 2034. Establishes that accreditation shall be through one of three national accrediting organizations; the approval process for consideration of alternative accreditations not already listed; and the approval process to extend the timeframe in meeting the accreditation requirement. Also establishes the process to recognize the use of an unaccredited preschool that has a satisfactory performance rating under the Classroom Assessment Scoring System (CLASS). Also establishes the processes for review of a decision by the department under this section and that payments to the family shall not continue during the appeal process if requests are submitted after the deadlines specified in this section.

#### §17-799-13 Child care rates

Establishes that effective in the 2024 program year, the maximum monthly payment amount for use of an unaccredited preschool is \$1,200. The maximum monthly payment amount for use of an accredited preschool or Hawaiian medium center-based care is \$1,500.

##### §17-799-13.1 Method of computing the family unit's co-payment

Establishes that effective the 2024 program year, the family unit's co-payment will be calculated as a percentage of the family unit's gross monthly income and changes the co-payment tiers to be up to 7% of the family's gross monthly income based on the table in Exhibit II.

§17-799-14 Method of computing child care payment

Clarifies that child care payments shall be computed based on monthly gross income based on household size. Adds that effective the 2024 program year, co-payment rates shall be determined pursuant to section 17-799-13.1.

§17-799-15 Child care payments

Removes presumptive eligibility as a consideration.

§17-799-16 Mandatory reporting

Clarifies the timeframes that action will be taken if a reported change results in a lower on-going payment or an increase to the on-going payment and that payment action to lower the payment requires timely and adequate notice.

§17-799-18 Denial, reduction, suspension, or termination of child care

Adds that a child care payment that results in a zero payment may be suspended if a declaration of natural disaster or emergency by the federal, state, or county government takes effect.

§17-799-19 Notices

Clarifies that in situations where the end result is an increase to the amount of child care payment requires only adequate notice be sent and clarifies notice contain the right to appeal the action of the department when applicable.

§17-799-22 Termination for insufficient funds

Clarifies funding is needing to be available in addition to being appropriated.

Exhibit II

Establishes a new co-payment chart that would be effective for the 2024 program year.

A public hearing will be held on:

**TBD.**

This will be a virtual event using Microsoft Teams.

There are two ways to participate in the public hearing: online via the internet or by telephone, or by written testimony. All interested persons are invited to attend the virtual hearing and present relevant information to state their views relative to the proposed rules either orally or in writing for the department to consider.

Online: Persons may present live video/oral testimony via internet or telephone during the online public hearing. To participate, you will need either a computer with internet access,

video camera, and microphone, or a telephone. **To sign up please email your request at least 48 hours in advance to: [BESSD.CCPO@dhs.hawaii.gov](mailto:BESSD.CCPO@dhs.hawaii.gov) to request the weblink to attend the virtual hearing via video conference call through Microsoft Teams.** Please include your email, full name, and phone number. A confirmation will be sent to you with instructions, the meeting link, and call-in number.

Written Testimony: Should written testimony be presented, one (1) copy shall be made available to the presiding officer at the public hearing or within seven (7) days before the hearing to:

Department of Human Services  
Attn: Scott Nakasone  
Benefit, Employment & Support Services Division  
1010 Richards Street, Suite 512  
Honolulu, Hawaii 96813

If written testimony would be provided without attending the public hearing, written testimony must be received by 4:30 pm on TBD.

Department of Human Services  
Attn: Scott Nakasone  
Benefit, Employment and Support Services Division  
1010 Richards Street, Suite 512  
Honolulu, Hawaii 96813

A copy of the proposed licensing rules will be available via the DHS website: <http://humanservices.hawaii.gov/admin-rules-2/proposed-rules/> or by calling (808) 586-7053 during regular business days and hours to request a copy at NO COST to any interested person, or by writing to:

Department of Human Services  
Benefit, Employment & Support Services Division  
1010 Richards Street, Suite 512  
Honolulu, Hawaii 96813

If you need any auxiliary aid/service or other accommodation due to a disability, contact the Child Care Subsidy Program Office at (808) 586-7053 or [BESSD.CCPO@dhs.hawaii.gov](mailto:BESSD.CCPO@dhs.hawaii.gov) as soon as possible. Requests made as early as possible will allow adequate time to fulfill your request.

Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy.

  
\_\_\_\_\_  
CATHY BETTS, DIRECTOR

Department of Human Services

Amendment and Compilation of Chapter 17-799

Hawaii Administrative Rules

August 25, 2023

1. Chapter 17-799, Hawaii Administrative Rules, entitled "Preschool Open Doors Program" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 799

PRESCHOOL OPEN DOORS PROGRAM

Subchapter 1 General Provisions

§17-799-1	Purpose
§17-799-2	Definitions
§17-799-3	Confidentiality
§17-799-4	Scope
§17-799-5	Application period
§17-799-6	Application process
§17-799-7	Priority of applications
§17-799-8	Family unit eligibility requirements
§17-799-9	Income considered in eligibility determination
§17-799-10	Excluded monthly income
§17-799-11	Program enrollment
§17-799-12	Program qualifications for preschools
§17-799-12.1	Accreditation requirements
§17-799-13	Child care rates
§17-799-13.1	Method of computing family unit's co- payment
§17-799-14	Method of computing child care payment
§17-799-15	Child care payments
§17-799-16	Mandatory reporting
§17-799-17	Waitlisted applicants
§17-799-18	Denial, suspension, or termination of child care
§17-799-19	Notices
§17-799-20	Administrative appeal requests
§17-799-21	Underpayments and overpayments
§17-799-22	Termination for insufficient funds
§17-799-23 to §17-799-50	Reserved

Historical Note: Chapter 17-799 is based substantially upon chapter 17-798.2, Child Care Services, Subchapter 2, Preschool Open Doors [Eff 03/08/08; am 01/22/10; am and comp 12/31/17; R 08/06/21]

SUBCHAPTER 1

GENERAL PROVISIONS

**§17-799-1 Purpose.** Child care payments under this subchapter shall be for early childhood services to ~~[low and moderate income]~~ low- and moderate-income families that contributes to school readiness by providing up to ~~[a]~~ two school ~~[year]~~ years of experience in a preschool program chosen by the child's caretaker prior to the child entering kindergarten. The intent of the program is to provide child care payments to as many eligible families as possible through the ~~[limited]~~ funding that is appropriated and available for the State fiscal year. [Eff 02/09/14; comp 12/31/17; am and comp  
] (Auth: HRS §§346-14, 346-181)  
(Imp: HRS §§346-14, 346-181)

**§17-799-2 Definitions.** As used in this chapter: "Accredited" means a group child care center, or group child care home, that is certified to meet accreditation standards by the National Association for the Education of Young Children (NAEYC), ~~[or]~~ the National Early Childhood Program Accreditation (NECPA), the National Association of Family Child Care (NAFCC), or other accrediting organization approved by the director ~~[to meet accreditation standards]~~.

"Adequate notice" means a written notice that includes:

- (1) A statement of the action the agency has taken or intends to take;
- (2) The reason for the intended action;
- (3) The specific departmental rules supporting the intended action;



- (4) The name and telephone number of the person in the department to contact for additional information;
- (5) The family unit's right to request an informal review, an administrative appeal, or both; and
- (6) Information on the availability of free legal representation, if applicable.

~~["Adult abuse record check" means an examination of an individual's adult abuse confirmation history through:~~

- ~~(1) An initial name inquiry into State adult protective services files;~~
- ~~(2) Subsequent adult abuse confirmation history checks for new hires and re-hires; and~~
- ~~(3) An annual name inquiry into State adult protective services files.]~~

"Applicant" means the caretaker, including an emancipated minor pursuant to HRS §571-2 and HRS §577-25 and a teenage head of the household, who has the responsibility to provide care for the child, and needs child care. This does not include an unmarried minor who is a parent to the individual's own baby who together reside in the same household with the minor's adult caretaker.

"Application" means the action by which an individual indicates on a form prescribed by the department a request to receive assistance with child care costs and services.

"Applying program year" means the school year that the child will be attending child care.

"Approved priority applicant" means an applicant that has met program eligibility criteria and has their application income-ranked within their priority group, and within their geographical area designated by the department~~[, by dividing their monthly gross income by eighty-five of the State Median Income for a family of the same size].~~

"Background check" means [~~criminal history record checks, child and adult abuse and neglect checks, and other checks required by federal or State law, conducted by the department in order to determine eligibility for child care services~~] a review of a person's background information pursuant to chapter 17-801.

"Benefit month" means the calendar month for which the caretaker is eligible for a child care payment.

"Budget month" means the calendar month(s) for which the child care expense and income of a family unit are used to compute the payment amount that the family unit shall receive in the payment month.

"Caretaker" means an adult who resides with and is responsible for the care of a child, and who is a birth, hanai, foster, or adoptive parent, guardian, step-parent, or relative who is related to the child by blood, marriage, or adoption, or a person authorized by the caretaker through a power of attorney valid for a period not to exceed twelve months. The caretaker designation may remain even when the caretaker is temporarily absent from the home as long as the caretaker continues to maintain responsibility for the care, education, and financial support of the child. This includes a foster parent who may not be providing financial support to the child but may be receiving support for the child from a private or public agency. This also includes teen parents who are birth parents to the child.

"Child" means any person who has not reached the age of eighteen years, excluding emancipated minors.

~~["Child abuse record check" means an examination of an individual's child abuse confirmation history through:~~

- ~~(1) An initial name inquiry into the State child welfare record files;~~

- ~~(2) Subsequent child abuse confirmation history checks for new hires and re-hires; and~~
- ~~(3) An annual name inquiry into State child welfare record files.]~~

"Child care" means those situations in which a caregiver has agreed to assume the responsibility for the child's supervision, apart from and in the absence of the child's caretaker, for any part of a twenty-four-hour day. Child care, for the purposes of this chapter, is limited to care provided in a group child care home, or in a group child care center.

"Co-payment" means the family unit's share of the child care expense which is the difference between the maximum payment amount allowed for the type and amount of care up to the department's child care payment rate maximum, and the amount the family unit is determined to be eligible for by the department.

"Corrective payment" means a payment issued by the department in an amount equal to the difference between what a caretaker is entitled to receive by regulation and the amount they actually received.

"Department" means the department of human services or its designee.

"Eligibility period" means a period up to twelve months, established by the department, that shall not exceed the applicable State fiscal year, during which the household may be eligible for child care payments.

"Essential person" means a needy person designated by the caretaker to be included in the TANF household that receives a public-funded financial assistance payment, who is ineligible in the person's own right for TANF, who is designated by the caretaker as being essential to the caretaker's well-being, and who performs a service that would not otherwise be performed or that would otherwise have to be purchased if the person did not live in the TANF household

"Exempt" or "Exempt center-based provider" means a facility providing legally-exempt child care, in accordance with section 346-152, HRS, that is in

compliance with chapter 17-800. It also includes all staff employed at a child care facility, any volunteers who provide care for children for ten hours or more per week, substitutes, and any other individuals who have unsupervised access to children in exempt center-based care.

"Experiencing homelessness" means a family unit:

- (1) Lack a fixed, regular, and adequate nighttime residence;
- (2) Are sharing the housing of other persons due to a loss of housing, economic hardship, or a similar reason, are living in motels, hotels, or camping grounds due to the lack of alternative adequate accommodation are in emergency or transitional shelters, are abandoned in hospitals;
- (3) Have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- (4) Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- (5) Are migratory children (as the term is defined in section 1309 of the Elementary and Secondary Education Act of 1965).

"Family unit" means the caretakers and their minor children who reside together in the same household.

"Federal fiscal year" means a period beginning October 1 and ending September 30.

"Federal Poverty Guidelines" or "FPG" means the poverty guidelines for Hawaii that are established in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2) and cited in the Child Care and Development Fund Plan For State of Hawaii that is approved by the Administration for Children and Families, U.S.

Department of Health and Human Services, pursuant to C.F.R. §§98.14 to 98.18.

"Gross income" means all non-excluded earned and unearned income as specified in this chapter.

"Group child care center" or "GCC" means a facility, other than a private home, at which care is provided, as defined in [~~HRS §346-151.~~] section 346-151, HRS.

"Group child care home" or "GCCH" means a facility, which may be an extended or modified private home, at which care is provided to seven to twelve children, as defined in [~~HRS §346-151.~~] section 346-151, HRS.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than the natural parents at the time of the child's birth or early childhood. The child is given outright and the natural parents renounce all claims to the child. The natural parents cannot reclaim the child except for the death or serious injury of the hanai parents.

"Hawaiian-medium center-based care" means a group child care center, as defined in section 346-151, HRS, with programs taught solely in the Hawaiian language that promote fluency in the Hawaiian language and that is licensed by the department in accordance with section 346-162, HRS.

~~["License exempt care" means group child care center care that is exempt from licensure or registration by the department under HRS §346-152.]~~

"Limited English proficiency" or "LEP" means limited ability in speaking, reading, writing, or understanding the English language by a person whose native language is a language other than English or by a person who lives in a family or community environment where a language other than English is the dominant language.

"Low-income" means gross income less than or equal to one hundred [~~eighty-five~~] eighty-five per cent of the Federal Poverty Guidelines.

"Minor" means a person under eighteen years old.

"Moderate-income" means gross income greater than one hundred ~~[eighty-five]~~ eighty-five per cent and less than or equal to ~~[two hundred fifty]~~ three hundred per cent of the Federal Poverty Guidelines.

"Monthly gross income limit" means ~~[eighty-five]~~ three hundred per cent of the ~~[State Median Income]~~ Federal Poverty Guidelines for a family of the same size.

"Non-recurring lump sum" means income that is not normally repeated or a cumulative amount received or available to be received by an individual. Educational loans, grants or scholarships shall not be considered as non-recurring lump sums.

"Overpayment" means the amount of payments issued to a caretaker for a benefit month that is in excess of the amount which the caretaker is eligible to receive. It also includes payments that are not used for their intended purpose.

"Payment month" means the calendar month in which a child care payment is issued.

"Power of attorney" means a legal instrument authorizing another to act as one's agent or attorney-in-fact.

"Preschool" means a Group Child Care Center (GCC) or Group Child Care Home (GCCH) that provides services for children ages two years to six years old.

~~["Presumptively eligible" means a family unit may be approved for child care payments upon submittal to the department of the completed and signed child care certificate and preschool confirmation form and consent forms for the department to conduct background checks on the employees of the selected preschool, pending the results of the required background checks.]~~

"Prospective budgeting" means computation of the child care payment based on the worker's best estimate of the child care expense and gross income that will exist in a calendar month. The best estimate shall be

based on the worker's reasonable projection of future circumstances based on the family unit's past and current month's circumstances.

"Relative" means a person related by blood, marriage, adoption, or hanai.

"Reside with" means an eligible child living in a home or family setting with the child's eligible caretaker.

"Self-employment" means an individual is not subject to discharge from his or her job by another person, reports income to the Internal Revenue Service and the State as a self-employed person and pays employer's and employee's share of social security taxes, ~~[and]~~ is not considered an employee of an agency or organization~~[-]~~, and generates income equivalent to twenty hours per week multiplied by 4.3333 weeks multiplied by the State minimum wage at the time of eligibility determination and redetermination.

"Special populations referral" means documentation to verify that a child does not qualify full-time for the state department of education (DOE) special education program services and:

- (1) Has a physical, developmental, behavioral or emotional health condition that is outside of the normal range;
- (2) Meets the state department of health criteria for environmental risk as defined in HRS §321-351;
- (3) Resides in a LEP household; or
- (4) Is ~~[homeless-]~~ experiencing homelessness and the family is participating in or enrolling in a program for homeless services.

"State fiscal year" means a period beginning July 1 and ending June 30.

"State Median Income" means the official guidelines issued yearly in the Federal Register

§17-799-2

by the Secretary of Health and Human Services, Administration for Children and Families under the authority of 42 U.S.C. §8621, the Omnibus Budget Reconciliation Act of 1981.

"Temporarily absent" means a period of up to ninety days when the caretaker is not residing in the home with the child as a result of employment or job training commitments.

"Temporary Assistance for Needy Families" or "TANF" means the federal and state financial assistance and non-assistance programs administered by the department under 42 U.S.C. §§601-617 and HRS §346-29.

"Timely notice" means when the department mails a notice of adverse action at least ten calendar days prior to the effective date of the action.

"Underpayment" means the amount of payments issued to a caretaker for a benefit month that is less than the amount which the caretaker was eligible to receive. [Eff 02/09/14; comp 12/31/17; am and comp  
] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-151, 346-181)

**§17-799-3 Confidentiality.** Requirements for confidentiality shall be as provided in chapter 17-601. [Eff 02/09/14; comp 12/31/17; comp  
] (Auth: HRS §§346-10 and 346-14)  
(Imp: HRS §346-10)

**§17-799-4 Scope.** (a) Child care services shall include, but are not limited to:

- (1) Supervision to assure the child's safety, comfort, and health;



- (2) Personal care as appropriate to the child's age and developmental maturity;
  - (3) Activities appropriate to the child's age, developmental stage, and degree of physical or mental ability; and
  - (4) Health and nutritional services.
- (b) Child care services shall exclude:
- (1) Services provided to a child enrolled in or eligible for public education in kindergarten to twelfth grade during the regular school day;
  - (2) Services for which a child receives academic credit toward graduation;
  - (3) Any instructional services that supplants or duplicates the academic program of any public or private school which is established for the purpose of compliance with the school attendance law of Hawaii; or
  - (4) Services that provide specialized training or skill development to children, as indicated in HRS §346-152(a)(4).
- (c) Child care payments shall only be used for services described in subsection (a).
- ~~[(d) This chapter shall be effective with the application period for child care payments for the State fiscal year 2015 program services.] [Eff 02/09/14; comp 12/31/17; am and comp ]~~  
(Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-5 Application period.** (a) The department shall establish an application period during the calendar year to accept applications for the preschool open doors program for the ensuing State fiscal year.

(b) Prior to the start of an application period, the department shall issue a public notice to the

general public announcing the availability to apply for the program. The public notice shall contain:

- (1) The beginning and ending dates of the application period;
- (2) Information about how to obtain an application; and
- (3) Contact information for additional information.

(c) Within thirty days from the end of the application period, applications received by the department shall be processed in accordance with [~~§17-799-7~~] section 17-799-6, and prioritized in accordance with [~~§17-799-8~~.] section 17-799-7.

(d) The department shall conduct at least one application period during the calendar year. [Eff 02/09/14; comp 12/31/17; am and comp ]  
(Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-6 Application process.** (a) A request for child care payments shall be submitted on an application form prescribed by the department.

- (b) The form shall be dated and signed by the applicant under penalty of law that all the information needed to establish eligibility for child care payments, as stated on the form, is true and correct.
- (c) The applicant shall be required to submit copies of documents for verification of the information provided to establish eligibility for the program.
- (d) The date of application shall be the date the signed and dated application form is received by the department.
- (e) An application received outside of an open application period shall be subject to 17-799-18(a)(2). [Eff 02/09/14; comp 12/31/17;

am and comp ] (Auth: HRS  
§§346-14, 346-181) (Imp: HRS §§346-14, 346-  
181)

**§17-799-7 Priority of applications. (a)**

Approved applications shall be assigned to priority groups in the following order from the highest priority to lowest.

- (1) Children who turned or will turn four years old between August 1 of the prior year through December 31 of the prior year applying for the program for the designated school year, have a completed Special Populations Referral form prescribed by the department, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool;
- (2) Children who will turn four years old between January 1 through July 31 of the year applying for the program for the designated school year, have a completed Special Populations Referral form prescribed by the department, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool; and
- (3) Children who will turn four years old during the year applying for the program for the designated school year, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool.

(b) Effective with the 2024 program year, approved applications shall be assigned to priority groups in the following order from the highest priority to lowest.

- (1) Children who are four years old or will be four years old within the applying program year, have a completed Special Populations Referral form prescribed by the department, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool;
- (2) Children who were served by the program at three years old who are four years old or will be four years old within the applying program year, have a completed Special Populations Referral form prescribed by the department, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool;
- (3) Children that were served by the program at three years old who are four years old or will be four years old within the applying program year, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool;
- (4) Children who are four years old or will be four years old within the applying program year, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool;
- (5) Children who are three years old or will be three years old within the applying program year, have a completed Special Populations Referral form prescribed by the department, and need child care assistance to attend preschool; and
- (6) Children who are three years old or will be three years old within the applying program year and need child care assistance to attend preschool.

~~[(b)]~~ (c) Approved applications shall be income-ranked within their priority group, and within their geographical area designated by the department, by dividing their monthly gross income by ~~[eighty-five]~~:

- (1) Eighty-five per cent of the State Median Income for a family of the same size~~[-]~~; or
- (2) Effective with the 2024 program year, three hundred per cent of the Federal Poverty Guidelines in effect for the program year for a family of the same size, which shall be updated annually on January 1 pursuant to section 17-799-8.

~~[(e)]~~ (d) The department shall issue written notification to each applicant for services, pursuant to 17-799-19. [Eff 02/09/14; comp 12/31/17; am and comp ] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-8 Family unit eligibility requirements.**

(a) The department shall verify that the child and caretaker meet the eligibility requirements as described in this chapter.

(b) A child eligible for child care payments shall reside with the eligible caretaker and meet the priority application criteria in 17-799-7.

(c) A child receiving child care payments under this chapter shall not be eligible to receive child care payments under chapter ~~[17-798.2]~~ 17-798.3 for the same preschool provider or same type of care.

(d) A caretaker shall be eligible for child care payments provided the caretaker has monthly gross income verified through documentation that does not exceed ~~[eighty-five]~~:

- (1) Eighty-five per cent of the State Median Income for a family of the same size, using the Income Eligibility Limits as established in Exhibit I, dated November 1, 2013, attached at the end of this chapter~~[-]~~; or
- (2) Effective with the 2024 program year, three hundred per cent of the Federal Poverty

Guidelines for a family of the same size, which shall be updated annually on January 1 to determine eligibility for the upcoming program year.

(e) A caretaker who is a foster parent licensed by the department, or by an organization under the authority of the department, shall not be subject to ~~[subsection (d).]~~ income limits for determining eligibility, and are not subject to the family unit's co-payment requirement under sections 17-799-14(b) (3) and (4), for the applying foster child.

(f) A family unit who meets the eligibility conditions of this section, but is not selected to participate in the program due to lack of funds shall be placed on a waitlist and assigned a waitlist priority as established in 17-799-17. [Eff 02/09/14; comp 12/31/17; am and comp ] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-9 Income considered in eligibility determination.**

(a) Monthly gross income shall be used to determine income eligibility of the family unit by using one of the following:

- (1) The average of the prior two months gross income for existing employment;
- (2) The monthly gross income received in the prior month for existing employment; or
- (3) The monthly gross income that is anticipated to be received by the family unit, such as, but not limited to, from prospective employment.
  - (A) Weekly gross income anticipated to be received shall be converted to a monthly gross income by multiplying the weekly income by 4.3333.
  - (B) Bi-weekly gross income anticipated to be received shall be converted to monthly income by multiplying the bi-weekly income by 2.1667.

- (C) Semi-monthly income anticipated to be received shall be converted to monthly income by multiplying the semi-monthly income by 2.
- (4) Gross income from the caretakers' business or self-employment such as selling real estate, or engaging in fishing and farming, which provide irregular income over a period of six months, may be allowed to be averaged to determine the budget month amount.
- (b) Monthly gross income means monthly sums of income received from sources such as but not limited to:
  - (1) Gross income (before deductions are made for items such as, but not limited to, taxes, union dues, bonds, and pensions) from:
    - (A) Wages;
    - (B) Salary;
    - (C) Armed forces pay, excluding basic housing allowance;
    - (D) Commissions;
    - (E) Tips;
    - (F) Piece-rate payments; or
    - (G) Cash bonuses earned.
  - (2) Social security pensions and survivors' benefits (prior to deductions for medical insurance) including:
    - (A) Railroad retirement insurance checks from the U.S. government; and
    - (B) Permanent disability insurance payments made by the Social Security Administration.
  - (3) Unemployment insurance benefits such as:
    - (A) Compensation received from government unemployment insurance agencies or private insurance companies during periods of unemployment; and
    - (B) Any strike benefits received from union funds.
  - (4) Worker's compensation benefits and temporary disability insurance benefits:

- (A) Worker's compensation benefits include compensation received from private or public insurance companies for injuries incurred at work;
- (B) Temporary disability insurance benefits include compensation received from private or public insurance companies for short-term disabilities resulting from off-the-job sickness or injury; and
- (C) The cost of the insurance shall have been paid by the employer and not by the employee, and the benefits are made to individuals who continue to be considered employees of the company;
- (5) Pensions and annuities, including pensions or retirement benefits paid to a retired person or the person's survivors by a former employer or by a union, either directly or by an insurance company;
- (6) Veteran's pensions and other benefits, which include:
  - (A) Money paid periodically by the Veteran's Administration to:
    - (i) Survivors of deceased veterans; or
    - (ii) Disabled members of the armed forces;
  - (B) Subsistence allowances paid to veterans for:
    - (i) Education; or
    - (ii) On-the-job training; and
  - (C) Refunds paid to former members of the armed forces as GI insurance premiums;
- (7) An allotment of a member of the armed forces;
- (8) Alimony;
- (9) Child support[+], including support or maintenance for or on behalf of a son or daughter who is over eighteen years of age;
- (10) Public assistance payments from another state;
- (11) Hawaii public assistance payments;



- (12) Adoption assistance payments;
- (13) Dividends from stockholdings or memberships in associations;
- (14) Periodic interest on savings or bonds;
- (15) Income from estates or trust funds;
- (16) Income from rental of property after business expenses;
- (17) Royalties;
- (18) Income received from self-employment:
  - (A) Income received from non-farm self-employment means the gross receipts minus expenses for an individual's own business, professional enterprise, or partnerships.
    - (i) Gross receipts shall include the value of all goods sold and services rendered.
    - (ii) Expenses shall include the costs of goods purchased, rent, heat, light, power, wages and salaries paid, business taxes, and other similar costs.
    - (iii) The value of salable merchandise consumed by the proprietors of retail stores shall not be included as part of net income.
    - (iv) Items such as depreciation, personal, business, and entertainment expenses, transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods shall not be deducted as business expenses. Personal expenses such as lunches and transportation to and from work shall not be deducted as business expenses.
  - (B) Income received from farm self-employment means the gross receipts minus operating expenses from the operation of a farm by a person on the

person's own account, as an owner, renter, or sharecropper.

- (i) Gross receipts shall include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items.
- (ii) Operating expenses shall include the cost of feed, fertilizer, seed, and other farming supplies, cash wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes (not state and federal income taxes), and other similar expenses.
- (iii) The value of fuel, foods, or other farm products used for family living shall not be included as part of net income.
- (iv) Items such as depreciation, personal, business, and entertainment expenses, transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, and state and federal taxes paid shall not be deducted as business expenses.  
[Eff 02/09/14; comp 12/31/17; am and comp ] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-10 Excluded monthly income.** The following types of income received in any given month shall be excluded from consideration in determining income eligibility for child care payments:

- (1) Money received from the sale of property such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling the property, in which case, the net proceeds would be counted as self-employment income;
- (2) Withdrawals of bank deposits;
- (3) Loans;
- (4) Gifts, including in-kind gifts such as free room and board, when the gift is not a form of compensation in lieu of wages or salary;
- (5) Monies received in the form of a nonrecurring lump sum payment including, but not limited to, the following:
  - (A) Income tax refunds, rebates, or credits;
  - (B) Retroactive lump sum social security, SSI, public assistance, or unemployment compensation benefits;
  - (C) Retroactive annual adjustment payments in the veteran administration's (VA) disability pensions;
  - (D) Lump sum inheritances or insurance payments;
- (6) Refunds of security deposits on rental property or utilities;
- (7) Capital gains;
- (8) Earnings of minor children who are members of the household and are students at least half-time shall be excluded even during temporary interruptions in school attendance due to semester or vacation breaks, provided the minors' enrollment will resume following the break;
- (9) Loans, grants, and scholarships obtained and used under conditions that prohibit use for current living expenses;
- (10) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education;
- (11) Home produce utilized for home consumption;

- (12) The value of an allotment under the Food Stamp Act of 1977, as amended, 7 U.S.C. §2017;
- (13) The value of USDA donated or surplus foods;
- (14) The value of supplemental food assistance under the Child Nutrition Act of 1966, 42 U.S.C. §§1771-1789, and the special food service program for children under the National School Lunch Act, as amended, 42 U.S.C. §§1751-1769;
- (15) Benefits received from the special supplemental food program for women, infants, and children (WIC), 42 U.S.C. §1771;
- (16) Allowances and payments to participants in programs, other than on-the-job training, under the Workforce Investment Act (WIA) of 1998, 20 U.S.C. §9201;
- (17) The earned income of individuals participating in on-the-job training programs under the Work Investment Act (WIA) of 1998, 20 U.S.C. §9201, who are between 18 and 19 years of age and under the parental control of another household member;
- (18) Earned income tax credit (EITC) payments received either as a lump sum or recurring payments under section 3507 of the Internal Revenue Code of 1986;
- (19) Financial assistance provided by a program funded in whole or in part under title IV of the Higher Education Act in accordance with Pub. L. No. 99-498;
- (20) Payments or allowances made under any federal, state, or local laws for the purpose of energy assistance;
- (21) Assistance payments received as a result of a declared federal major disaster or emergency from the federal emergency management agency (FEMA), and other comparable disaster assistance provided by any state or local government agency, and disaster assistance organizations;

- (22) Payments made from the Agent Orange Settlement Fund or any other fund established in connection with settling liability claims concerning the chemical Agent Orange, Pub. L. No. 101-201;
- (23) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4636;
- (24) Payments received under the Radiation Exposure Compensation Act, Pub. L. No. 101-426, to compensate individuals for injuries or deaths resulting from the exposure to radiation from nuclear testing or uranium mining;
- (25) Payments to individuals participating in the Senior Community Service Employment Program (SCSEP) funded under title V of the Older Americans Act of 1965, 42 U.S.C. §3001; Pub. L. No. 100-175;
- (26) Payments to volunteers derived from the volunteer's participation in the following programs authorized by the Domestic Volunteer Service Act of 1973, 42 U.S.C. §§5011, 4951-4958:
  - (A) Foster grandparent program;
  - (B) Senior companion program; and
  - (C) Volunteers in service to America (VISTA) and AmeriCorps programs;
- (27) Military re-enlistment bonus;
- (28) Foster board payments;
- (29) All payments pursuant to chapter 17-656.2; and
- (30) Any other payments made in accordance with state and federal laws that preclude the payments from being counted as income. [Eff 02/09/14; comp 12/31/17; comp ]  
(Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-11 Program enrollment.** (a) The department shall issue a designated form to as many approved priority applicants, as established in subsection ~~[17-799-7(b)]~~ 17-799-7(c), that can be enrolled for child care payments within the available state fiscal year funding. The department shall also issue a designated form to waitlisted approved priority applicants who meet the condition of subsection 17-799-17(f).

(b) The approved priority applicants shall return the completed and signed designated form within twenty days from the date of issuance to provide the name and address of the preschool and verify the cost of the preschool.

(c) The caretaker shall choose a preschool that meets the program qualifications in 17-799-12.

(d) The caretaker shall ensure that a school readiness assessment conducted by the preschool is submitted to the department.

(e) Failure to comply with subsection (d) shall be subject to section 17-799-18. [Eff 02/09/14; comp 12/31/17; am and comp ] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-12 Program qualifications for preschools.** A preschool chosen by a caretaker shall:

(1) Be limited for the purposes of this chapter to:

- (A) A group child care center that is licensed by the department under chapter 17-892.1~~[, or license exempt under HRS §346-152 and satisfies HRS §346-152.5; or]~~;
- (B) A group child care home that is licensed by the department under chapter 17-892.1; or
- (C) An exempt center-based provider that is listed with the department in accordance with chapter 17-800;

- (2) Agree to conduct a readiness assessment for each eligible child who is enrolled and approved to receive child care payments under this chapter. The readiness assessment, assessment results reporting form, and reporting submittal deadline, shall be prescribed by the department; ~~[and]~~
- (3) Be accredited pursuant to section 17-799-12.1; and
- ~~[(3)]~~ (4) Cooperate with the department for overpayment resolution if the caretaker chose to have child care payments forwarded to the preschool's account pursuant to subsection 17-799-15(a).  
[Eff 02/09/14; comp 12/31/17; am and comp ] (Auth: HRS §§346-14, 346-181, 346-184) (Imp: HRS §§346-14, 346-181, 346-184)

**§17-799-12.1 Accreditation requirements.** (a) A preschool that accepts enrollment of an eligible child approved to receive a subsidy under this chapter shall be accredited, or shall obtain accreditation within seven years of first accepting enrollment of an eligible child approved to receive child care payments under this chapter; provided that a preschool that existed prior to July 1, 2022, and is unaccredited as of July 1, 2022, shall commence the accreditation process no later than July 1, 2029, and shall obtain accreditation by July 1, 2034;

(b) Accreditation shall be obtained from one of the following national early learning accrediting organizations:

- (1) National Association for the Education of Young Children;
- (2) National Early Childhood Program Accreditation;
- (3) National Association for Family Child Care;  
or

(4) An accrediting organization approved by the director of the department; provided that the accrediting organization has standards comparable to the organizations specified in paragraphs (1) through (3).

(c) An accrediting organization seeking approval for accreditation under paragraph (b)(4) shall:

(1) Submit a request for approval to the department on a form prescribed by the department, along with documentation that shows the accrediting organization has standards that are comparable to the accrediting organizations listed in paragraphs (b)(1) through (3);

(2) The department shall review the request, utilizing standards established by accrediting organizations in paragraphs (b)(1) through (3) for comparison and provide a written determination granting or denying the request; and

(3) A decision denying a request for approval of an accrediting organization may be appealed by the accrediting organization requesting a review by the director. The review shall consider only the documentation provided with the request for approval and the department's written determination; provided that the director may request further information from the preschool and the department at the director's sole discretion. A decision by the director under this subsection is final.

(d) The director may grant to any preschool one or more extensions to obtain accreditation on a case-by-case basis; provided that the preschool has applied for accreditation and made good faith efforts to become accredited before the applicable deadline.

(1) A preschool requesting an extension shall submit to the department a request for an extension on a form prescribed by the department along with documentation that shows that the preschool has applied for



accreditation and made good faith efforts to become accredited before the applicable deadline. If the request is received after the applicable deadline for the preschool to obtain accreditation specified in subsection (a), child care payments to the family shall not be authorized for that preschool;

- (2) The department shall review the request and provide a written determination granting or denying the request; and
- (3) A determination denying a request for extension under this subsection may be appealed by the preschool requesting a review by the director. The review shall consider only the documentation provided with the request for extension and the department's written determination; provided that the director may request further information from the preschool and the department at the director's sole discretion. A decision by the director under this subsection is final.

(e) Notwithstanding subsections (a) and (b), child care payments may continue to be paid to a family utilizing an unaccredited preschool after the applicable deadline if the preschool maintains a satisfactory performance rating under the Classroom Assessment Scoring System (CLASS) developed by the University of Virginia and the rating was evaluated in conformance with the U.S. Department of Health and Human Services guidelines; provided that:

- (1) A preschool shall provide to the department written verification of the satisfactory performance rating; and
- (2) Failure by the preschool to provide the written verification of the satisfactory performance rating shall result in a suspension of the child care payments to

eligible families for services provided by  
the unaccredited preschool pursuant to  
sections 17-799-18 and 17-799-19. [Eff  
] (Auth: HRS §§346-14,  
346-181, 346-184) (Imp: HRS §§346-14, 346-  
181, 346-184)

- (1) \$919 for accredited licensed and accredited license-exempt group child care center preschool; and
- (2) \$795 for non-accredited licensed and non-accredited license-exempt group child care center preschool, and group child care home.

(1) \$1500 for accredited licensed group child care center preschool, an accredited exempt center-based provider operating a group child care center preschool and listed in accordance with chapter 17-800, or for Hawaiian medium center-based care, as defined under this chapter; and

(2) \$1200 for non-accredited licensed group child care center preschool and group child care home, or for a non-accredited exempt center-based provider operating a group child care center preschool and listed in accordance with chapter 17-800. [Eff 02/09/14; am and comp 12/31/17; am and comp ] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

799-27

following steps shall be used to compute the family unit's co-payment:

- (1) Determine the monthly gross income for the family unit;
- (2) Identify the family unit size;
- (3) Determine the family unit's co-payment tier based on the co-payment tier established in Exhibit II, attached at the end of this chapter; and
- (4) Multiply the family unit's co-payment tier by the monthly gross income for the family unit. [Eff \_\_\_\_\_] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-14 Method of computing child care**

**payment.** (a) Child care payment shall be computed based on:

- (1) Monthly gross income based on household size;
- (2) The preschool chosen by the family unit;
- (3) The actual cost of child care selected; and
- (4) The type of child care.

(b) The child care payment amount shall be determined by:

- (1) Identifying the type of child care selected and approved for each eligible child, and selecting the appropriate rate as established in section 17-799-13;
- (2) Comparing the child care allowance according to subsection (b)(1) and the actual child care cost, and choosing the lesser amount.
- (3) Determining the family unit's co-payment (conversely, the percentage of the department's maximum rate allowable) based on the family unit's monthly gross income, and using the co-payment rates established in Exhibit I, dated November 1, 2013, attached at the end of this chapter[-]; provided that, effective with the 2024

program year, the family unit's co-payment shall be determined pursuant to section 17-799-13.1.

- (4) Subtracting the family unit's co-payment from the amount determined in subsection (b) (2).

(c) The family unit shall be responsible for any child care costs in excess of the child care payment.

(d) The family unit shall be responsible to pay its share of the child care cost directly to the preschool.

(e) The department shall project the family unit's eligibility and monthly payments prospectively for the entire eligibility period.

(f) The initial payment shall be calculated from the first calendar day of the initial month of eligibility to the end of the month, and shall be considered the first month of the eligibility period.

[Eff 02/09/14; comp 12/31/17; am and comp  
] (Auth: HRS §§346-14, 346-181) (Imp:  
HRS §§346-14, 346-181)

**§17-799-15 Child care payments.** (a) Payment for child care shall be issued one month at a time and paid to the caretaker; provided that a caretaker may choose to have the child care payment forwarded by the department as a direct deposit from the caretaker's account to the preschool, if the preschool agrees to accept the direct payment and registers an account with the department's payment system.

(b) Child care payments include:

- (1) A one-time only payment in a State fiscal year for registration, which may also include supply and activity fees, required by the facility, not to exceed \$125.00; and
- (2) Monthly cost of child care per child, as paid, but not to exceed the child care rates specified in section 17-799-13.

(c) The department shall:

~~[(1)] Allow, at the department's option, for the presumptive eligibility of a license-exempt preschool selected by the caretaker upon receipt by the department of the completed and signed child care certificate and preschool confirmation forms and consent forms for conducting a background check, provided that the presumptive eligibility shall end upon completion of the background check;~~

~~+(2)]~~ (1) Authorize the initial and subsequent monthly child care payments based on sections 17-799-8, 17-799-9, 17-799-10, 17-799-11, 17-799-12, 17-799-13, 17-799-13.1, 17-799-14, 17-799-15, 17-799-16, 17-799-18, 17-799-19, 17-799-21, and 17-799-22;

~~+(3)]~~ (2) Provide notification of payment to the family unit pursuant to section 17-799-19; and

~~+(4)]~~ (3) Track and monitor appropriateness and utilization of child care and payments.

(d) The child care payment issued for a benefit month shall not be issued more than once except when the caretaker cannot continue to use the preschool due to the following:

- (1) Unanticipated closure of the preschool;
- (2) Child care had been paid for the month;
- (3) The caretaker enrolls the child in another preschool in the same month child care was issued for the preschool referenced in paragraph (d) (1);
- (4) The preschool referenced in paragraph (d) (1) refuses to refund the child care paid for the month; and
- (5) The new preschool enrollment requires a child care payment from the family unit for the month. [Eff 02/09/14; comp 12/31/17; am and comp ] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-16 Mandatory reporting.** (a) A recipient of child care payments shall be responsible to report the following changes to the department within ten calendar days of occurrence:

- (1) Preschool child is attending;
- (2) Cost of care;
- (3) Child care type; or
- (4) Child is no longer attending preschool.

(b) Changes may be reported in writing, in person, or by telephone, and shall be supported by verifying documentation.

(c) When changes are reported pursuant to this section, the department shall take action on the reported changes ~~[that result in a lower payment and calculate payments for the balance of the eligibility period, after timely and adequate notice.]~~ as follows:

- (1) Changes that result in a lower payment shall have payments recalculated for the balance of the eligibility period, after timely and adequate notice.
- (2) Changes that result in a higher payment shall have payments recalculated for the balance of the eligibility period and the increased payment issued starting in the first available full month.

(d) Changes that are reported shall be implemented in the first month following the month in which the change was reported, and the department shall recover any overpayments from the date of the occurrence. [Eff 02/09/14; comp 12/31/17; am and comp

] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-17 Waitlisted applicants.** (a) If an application has been approved but all available funds have been obligated, the applicant shall be placed on a prioritized waitlist that shall follow the priority methodology established in section 17-799-7.

(b) Waitlisted applicants shall be provided written notification as referenced in subsection 17-799-19(b).

(c) While on the waitlist, the applicant may be required to update information contained in the application.

(d) Availability of funding shall be reevaluated periodically by the department during the State fiscal year to determine if funding is available to enroll waitlisted applicants.

(e) Upon determining funds are available, the department shall select waitlisted applicants by priority, and provide notification of program enrollment as established in section 17-799-19.

(f) Waitlisted applicants selected for program enrollment shall meet all eligibility requirements as established in section 17-799-8.

(g) Eligibility for the initial payment shall be the later of:

- (1) The month that requirements of section 17-799-11(b) are met; or
- (2) The eligible child's first month of preschool.

(h) If the waitlisted applicant is unable to meet requirements of subsections (f) and (g), the applicant will be notified of their application denial and the department shall refer to the next available waitlist applicant by priority.

(i) Assignment of applicants to the waitlist shall be final and conclusive. [Eff 02/09/14; comp 12/31/17; comp ] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-18 Denial, reduction, suspension, or termination of child care.** (a) Child care payments may be denied, reduced, suspended, or terminated when:

- (1) The caretaker does not complete the process of application or determination of eligibility within the open application period, or withdraws the application;

- (2) The caretaker submits an application outside the open application period;
- (3) The caretaker does not sign and date the application form prescribed by the department;
- (4) The caretaker does not submit a completed application form prescribed by the department;
- (5) The caretaker does not submit verifying documentation requested by the department;
- (6) The child does not meet the eligibility requirements referenced in subsection 17-799-8(b) or (c);
- (7) The caretaker does not meet the eligibility requirements referenced in subsection 17-799-8(d);
- (8) The preschool does not meet program qualification requirements referenced in subsection 17-799-12;
- (9) Conditions initially present in the family unit situation have changed and child care is no longer needed;
- (10) The family unit has not used authorized care;
- (11) The child has absences that are unexcused for more than five consecutive days;
- (12) The caretaker voluntarily requests discontinuance of child care payments;
- (13) The caretaker and the child are unable to use child care and another service must be planned for;
- (14) The caretaker fails to comply with mandatory reporting requirements;
- (15) The family unit is no longer eligible for child care payments;
- (16) The family unit cannot be located;
- (17) The family unit fails to utilize child care payments in accordance with subsection 17-799-4(c) and does not reconcile the resulting overpayments in accordance with section 17-799-21;



- (18) The caretaker fails to comply with requirements referenced in subsection 17-799-11(b); or
  - (19) The department determines pursuant to section 17-799-22 that there are insufficient funds to maintain all children receiving care.
- (b) Child care payments may be suspended [~~for a period not to exceed one month~~] when:
- (1) The payment amount is determined to be zero; [~~or~~]
  - (2) A natural disaster or emergency is declared by the federal, state, or county government;  
or
  - [~~(2)~~] (3) The designated preschool does not meet the conditions set forth in section 17-799-12 and the family unit must find a different approved preschool. [Eff 02/09/14; comp 12/31/17; am and comp ]  
(Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-19 Notices.** (a) The department shall provide a written notice to applicants and recipients about their eligibility status that shall contain:

- (1) A statement of the action taken;
- (2) The reasons for the action;
- (3) The specific rules supporting the action; and
- (4) The right to appeal the action of the department through established administrative appeals procedures, when applicable.

(b) Applicants that are placed on a waitlist shall be provided written notification of this designation, and a separate notice if they are selected from the waitlist to enroll into the program.

(c) The department shall provide a caretaker with timely and adequate notice prior to taking

adverse action to deny, reduce, suspend, or terminate any child care payments specified in this chapter.

(d) A caretaker can submit verifying documentation for consideration by the department to reverse the proposed department action prior to the effective date of the action.

(e) Only adequate notice is required when the following occurs:

- (1) A caretaker is deceased;
- (2) A caretaker left the State;
- (3) A caretaker requests discontinuance of child care payments;
- (4) A caretaker fails to comply with mandatory reporting requirements;
- (5) A caretaker's whereabouts are unknown; ~~[or]~~
- (6) A caretaker receives an increase in the amount of monthly child care payments; or
- ~~[(6)]~~ (7) The department determines pursuant to section 17-799-22 that there are insufficient funds to maintain all children receiving care. [Eff 02/09/14; comp 12/31/17; am and comp ]  
(Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-20 Administrative appeal requests. (a)**

A caretaker may file a written request for an administrative appeal, in accordance with the provisions set forth in chapter 17-602.1, when the family unit disagrees with the department's adverse action to deny, reduce, suspend, or terminate payment, or with the department's determination of an overpayment, except in the case of sections 17-799-17 or 17-799-18(a) (19).

(b) Child care payments shall not continue during the appeal process. [Eff 02/09/14; comp 12/31/17; comp ] (Auth: HRS §§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

**§17-799-21 Underpayments and overpayments. (a)**

Underpayments shall be processed as follows:

- (1) Prompt action shall be taken to correct any underpayment to a currently eligible caretaker who would have received a greater payment if an error by the department had not occurred.
- (2) If a caretaker has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment.
- (b) Overpayments shall be processed as follows:
  - (1) Failure to provide information, as specified in sections 17-799-6, 17-799-7, 17-799-15, 17-799-16, and 17-799-17, or errors made by the department may affect the caretaker's eligibility and result in an overpayment.
  - (2) An overpayment made to a caretaker shall be recovered through:
    - (A) Repayment in cash, in full or in part, by the caretaker to the department; or
    - (B) A reduction of not less than ten percent in the child care payment amount payable to the caretaker in subsequent months until the entire amount of overpayment is recovered, provided the caretaker continues to receive such payments.
  - (3) A caretaker subject to recovery of an overpayment shall be provided adequate notice by the department including:
    - (A) The reasons, dates, and the amount of the alleged overpayment; and
    - (B) The proposed method by which the overpayment shall be recovered.
  - (4) Recovery of an overpayment to former recipients of child care payments shall be referred to the department's fiscal management office for collection action.

- (5) If a caretaker for whom a collection action has been initiated fails to make a payment for any month in the calendar tax year, the department may refer debts exceeding twenty-five dollars to the comptroller of the State for tax setoff as specified in chapter 17-606. [Eff 02/09/14; comp 12/31/17; comp ] (Auth: HRS §§346-14, 346-44, 346-181, 2) (Imp: HRS §§346-35, 346-44, 346-181)

**§17-799-22 Termination for insufficient funds.**

- (a) The department may, at its discretion, refuse to take new applications, refuse to enroll priority applicants who have been waitlisted, reduce payments, or terminate payments when there are insufficient funds to pay child care payments at current amounts through the end of the State fiscal year.
- (b) Refusal to take new applications, refusal to enroll approved priority applicants who have been waitlisted, reducing payments, or terminating payments will first be accomplished in reverse priority from what is listed in section 17-799-7. Priority will further be determined within the categories set forth in section 17-799-7 by income, with higher income family units' payments reduced or terminated first.
- (c) The department budget will be managed by reviewing monthly expenditures and evaluating whether the cumulative expenditures at the end of any given month are less than or equal to the number of months that have expired in the fiscal year times 1/12 of the budget appropriation for child care payments for the State fiscal year.
- (d) When the department determines that the budget appropriation has or soon will be exceeded, notices of adverse action may be issued to limit the number of children receiving payments in any given month or to take other necessary action to operate within the child care budget appropriation and available funds. A decision under this subsection

§17-799-21

shall be final and conclusive." [Eff 02/09/14; comp  
12/31/17; am and comp ] (Auth: HRS  
§§346-14, 346-181) (Imp: HRS §§346-14, 346-181)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material except source notes and other notes, is underscored.

3. Additions to update source notes and other notes to reflect these amendments to sections are not bracketed, stricken, or underscored.

4. These amendments to and compilation of chapter 17-799, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on August 25, 2023 and filed with the Office of the Lieutenant Governor.

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CATHY BETTS  
Director of Human Services

APPROVED AS TO FORM:

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Deputy Attorney General

**Child Care**  
**Gross Income Eligibility Limits and Sliding Fee Scale**

<b>Family Size</b>	<b>Income Eligibility Limit</b>	<b>0-100% FPG  0% co-pay</b>	<b>101%-150% FPG  10% co-pay</b>	<b>151%-200% FPG  20% co-pay</b>	<b>201%-300% FPG  30% co-pay</b>
1	2,755	1,102	1,653	1,928	2,755
2	3,718	1,487	2,230	2,602	3,718
3	4,680	1,872	2,808	3,276	4,680
4	5,643	2,257	3,385	3,949	5,643
5	6,605	2,642	3,963	4,623	6,605
6	7,568	3,027	4,540	5,297	7,568
7	8,530	3,412	5,118	5,971	8,530
8	9,493	3,797	5,695	6,644	9,493
For each additional, add	963	385	577	673	963

**Instructions:**

1. Gross Income (GI) eligibility limit is at 250% of Federal Poverty Guidelines (FPG).
2. Compare GI with Income Eligibility Limit to determine income eligibility.
3. If GI is less than or equal to the Income Eligibility Limit, find the largest reimbursement rate for which the income limit is greater than or equal to GI.

Department of Human Services  
Benefit, Employment and Support Services Division  
November 1, 2013

EXHIBIT I

**Child Care  
Co-Payment Sliding Fee Scale**

<b>Per Cent of FPG</b>	0-160%	161- 180%	181- 200%	201- 220%	221- 240%	241- 260%	261- 280%	281- 300%
<b>Co-Payment</b>	0% co-pay	1% co-pay	2% co-pay	3% co-pay	4% co-pay	5% co-pay	6% co-pay	7% co-pay

Federal Poverty Guidelines (FPG), based on household size, will be updated annually on January 1 for the upcoming program year.

Source: <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

Department of Human Services  
Benefit, Employment and Support Services Division

EXHIBIT II



## **IV. NEW BUSINESS**

B. Discussion and Action on Proposed  
Amendments to HAR Title 15 Chapter 217,  
**Kakaako Mauka Area Rules**, promulgated  
by Department of Business, Economic  
Development and Tourism (DBEDT)

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2)

Date: 10/11/2023

Department or Agency: Hawaii Community Development Authority

Administrative Rule Title and Chapter: 15-217

Chapter Name: Mauka Area Rules

Contact Person/Title: Ryan Tam/Director of Planning or Craig Nakamoto/Exec. Director

E-mail: ryan.am.tam@hawaii.gov or craig.k.nakamoto Phone: 808-594-0338 or 808-594-(

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☒ No

If "Yes," provide details: <https://dbedt.hawaii.gov/hcda/kakaako-mauka-area-rule-amendments/>

**I. Rule Description:**

☐ New ☐ Repeal ☒ Amendment ☒ Compilation

**II. Will the proposed rule(s) affect small business?**

☒ Yes ☐ No

(If "No," no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

**III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?**

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

**IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))**

☐ Yes ☒ No

(If "Yes" no need to submit this form.)

\*

\*

\*

**If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:**

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.  
Any small business involved in land development (such as construction of a new building, renovation of an existing facility, or establishing a use) in the Kaka'ako Community Development District is required to comply with the proposed amended rules.
2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.  
For the types of minor renovation projects that are typically undertaken by small businesses, permit application requirements and fees will be reduced.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.  
Fee schedule was last updated in 2011.
  - b. Amount of the proposed fee or fine and the percentage increase.  
Minor permits are increasing to \$50 (up from \$20 or a 250% increase).
  - c. Reason for the new or increased fee or fine.  
Increases are intended to be consistent with rules in other community development districts (Kalaeloa and Kaka'ako Makai)
  - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).  
Amount of staff time required for project reviews and inflation were partial considerations in the determination of the fee amounts.
3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.  
Additional revenue is expected to be minimal; revenue will be used to support agency planning and operations in the Kaka'ako Community Development District.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

A new renovation permit, expanded rules clearance, and elimination of some permits will enable faster, streamlined approvals.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

Not applicable.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

The proposed rules are intended to reduce the burden of permitting for small businesses while maintaining land use controls on larger projects and developers in order to achieve the legislature's vision for Kaka'ako.

7. How the agency involved small business in the development of the proposed rules.

Outreach sessions were held with the Kaka'ako Improvement Association (representing businesses in Kaka'ako) and other stakeholders in the development of the Mauka rule updates.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

The new rules will incorporate incentive zoning, which will enable greater density in exchange for providing community benefits such as additional affordable housing, community resiliency, or other community facilities.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

Not applicable

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.  
Not applicable.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.  
Not applicable.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.  
Not applicable.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.  
Not applicable.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.  
Not applicable.

\* \* \*

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

# **Proposed Updates to §15-217, Hawai'i Administrative Rules, Kaka'ako Mauka Area Rules**

September 2023

Title 15, Chapter 217, Hawaii Administrative Rules ("HAR"), Mauka Area Rules, relating to the Kaka'ako Makai Community Development District ("CDD") took effect on November 11, 2011.<sup>1</sup>

In 2016, the Hawaii Community Development Authority ("HCDA") completed a Transit Oriented Development ("TOD") Overlay Plan<sup>2</sup> which covered selected parcels in the Mauka Area of the Kaka'ako CDD. The plan assessed the impacts of building height and density incentives for the provision of public benefits, parking policy changes, and other urban streetscape changes.

To implement these policies, HCDA staff and its consultant, Hi.Arch.Y LLC., conducted extensive outreach on proposed amendments to the Mauka Area Rules. Virtual community and stakeholder meetings were held between November 2021 and November 2022. Comments received through both the EIS and community outreach processes were incorporated into the proposed amendments. A presentation on the draft rules was provided to the HCDA Board in December 2022, April 2023, and September 2023.

The proposed amendments are generally designed to promote public benefits, enhance the urban realm, and streamline permit reviews. These amendments include:

- Incentive zoning
- Parking deregulation, including deleting minimum parking requirements
- Adjustments to land use
- Simplified permitting and other changes

<sup>1</sup> Hawaii Community Development Authority. (November 11, 2011). *Mauka Area Rules. Title 15, Subtitle 4, Chapter 217, Hawaii Administrative Rules.*  
<https://dbedt.hawaii.gov/hcda/files/2012/11/Chapter-217-Mauka-Area-Rules-EFF-2011.11.11.pdf>

<sup>2</sup> Hawaii Community Development Authority. (March 18, 2016). *Kaka'ako Community Development District TOD Overlay Plan. Final Draft.*  
<https://dbedt.hawaii.gov/hcda/files/2016/05/Final-TOD-Overlay-Plan-Draft-31816.pdf>

## Summary of Proposed Key Changes to the Mauka Area Rules

August 2023 Administrative Draft (rev 2)

Proposed Change	Citation	Notes
<b>Rule Clarifications</b>		
<b>1. Adding/removing various definitions</b>	§ 15-217-8	Clarifies the application of the rules. Removes obsolete definitions for terms that are no longer used. Corrects spellings.
<b>2. Clarify window requirements</b>	§ 15-217-55(j)	Provides for executive director discretion if visual light transmission requirements conflict with State Energy Code or other government requirements. Also limits requirement for operable windows to the lower floors of residential buildings.
<b>3. Design standards for flood zones</b>	§ 15-217-61(b)(2)	Adds windows and seating areas as permissible strategies to activate building frontage walls, and also adds executive director discretion to approve elements that break up the massing of flood control walls.
<b>4. Clarifies State Historic Preservation Division (SHPD) review</b>	§ 15-217-62	Allows for preservation of historically and culturally significant properties that may not be physically present. Also accommodates adjustments to timing of SHPD requirements with respect to permit applications.
<b>5. Conditional Use Permits</b>	§ 15-217-67	Clarifies application and approval processes for conditional use permits.
<b>6. Nonconformities</b>	§ 15-217-91	Allows maintenance of nonconforming exterior facades, roofs, gutters, and railings.

Permit Simplification		
<b>7. Application of improvement and development permits</b>	§ 15-217-8	Uses the size of site improvements or additional building areas rather than lot size to determine the applicability of improvement or development permits.
<b>8. Thoroughfare Standards</b>	§ 15-217-39	Adds flexibility to meet the City and County of Honolulu standards and the Complete Streets Design Manual.
<b>9. Elimination of View Corridor Setback</b>	§ 15-217-54(d)	Eliminates the 50' setback requirement for buildings over 65' high along certain thoroughfares.
<b>10. Elimination of Tower Floor Plate Size Requirements</b>	§ 15-217-55	Eliminates dimensional requirements for building towers (150' maximum length and 210' diagonal length).
<b>11. New and expanded permits</b>	§ 15-217-8 and § 15-217-76 to § 15-217-79	<ul style="list-style-type: none"> <li>• Zoning clearances added to support liquor licenses</li> <li>• Renovation permit allows interior modifications and up to 25% more floor area</li> <li>• Expanded use of rules clearances</li> <li>• Temporary use permit added to allow short-term uses</li> </ul>
<b>12. Updated Fee Schedule</b>	§ 15-217-93	Permit fees are updated to reflect current costs and staff level of effort.
<b>13. Pedestrian Zone Standards</b>	Figures PZ.1 and PZ.2	Consolidates neighborhood zone figures into simplified table of requirements.



Improved Planning		
<b>14. Adding business hotels</b>	§ 15-217-8	New allowed use; swimming pools or other resort-style facilities are not permitted.
<b>15. Update definition of Floor Area</b>	§ 15-217-8 and Figures NZ.1 to NZ.7	Adjusts definition of floor area to include parking, building overhangs, canopies with more than 50% coverage, and other clarifications. Based on the inclusion of parking as floor area, the maximum floor area ratios are also increased.
<b>16. Incentive zones</b>	§ 15-217-28 and Figure IZ.1 to IZ.3	Adds incentive zones to encourage the provision of public benefits on project sites in exchange for development bonuses.
<b>17. Landscaping</b>	§ 15-217-56	Front yards must not have less than 50% permeable surface area. Also landscaping should promote cultural and gathering practices wherever possible.
<b>18. Parking</b>	§ 15-217-63	<ul style="list-style-type: none"> <li>• Eliminates minimum parking requirements to allow developers to right-size parking, lower construction costs, and support multimodal transportation options. Consistent with City and County of Honolulu Ordinance 20-41.</li> <li>• Also requires disclosure of parking costs to renters and eliminates compact parking stalls.</li> <li>• Adopts City and County of Honolulu requirements for on-site bicycle parking.</li> </ul>
<b>19. Design Advisory Board</b>	§ 15-217-80	Adds a Native Hawaiian Cultural Consultant to the Design Advisory Board.
<b>20. Street trees</b>	Figure 1.7	Designates additional streets for large canopy street trees.
<b>21. Height Limits</b>	Figure 1.8	Height limits are increased to 100' in the Sheridan neighborhood and to 400' above Restaurant Row to gain consistency with adjacent neighborhoods.
<b>22. Building Type</b>	Figure BT.10	Adds the Tropical Urban Court building type to promote more sustainable, energy-efficient buildings.



## Kaka'ako Community Development District

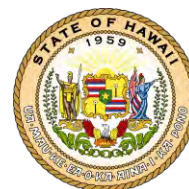
# Mauka Area Rules

Proposed Amendments to  
Hawai'i Administrative Rules, Title 15, Chapter 217

Administrative Draft (Ramseyer Version)  
August 2023



**Hawaii Community  
Development Authority**



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND  
TOURISM

Amendments and Compilation of Chapter 15-217  
Hawaii Administrative Rules



SUMMARY

1. §§15-217-1 to 15-217-3 are amended
2. §15-217-5 is amended
3. §15-217-8 is amended
2. §§15-217-21 to 15-217-27 are amended
3. §15-217-28 is added
4. §15-217-39 is amended
5. §§15-217-53 to 15-217-63 are amended
6. §§15-217-65 is amended
7. §§15-217-66 to 15-217-67 are added
8. §15-217-76 is amended
9. §15-217-77 is added
10. §15-217-78 is renumbered and amended
11. §15-217-79 is added
12. §§15-217-80 to 15-217-82 are amended
13. §§15-217-84 to 15-217-88 are amended

14. §§15-217-90 to 15-217-91 are amended
15. §15-217-93 is amended
16. Chapter 217 is compiled

Amendment and Compilation of Chapter 15-217  
Hawaii Administrative Rules



1. Chapter 15-217, Hawaii Administrative Rules,  
entitled "Mauka Area Rules", is amended and compiled  
to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 217

KAKAAKO COMMUNITY DEVELOPMENT DISTRICT

MAUKA AREA RULES

Subchapter 1 Purpose and Applicability

§15-217-1	Title
§15-217-2	Purpose
§15-217-3	Applicability
§15-217-4	Minimum requirements
§15-217-5	Rules of interpretation
§15-217-6	Compliance with other regulations
§15-217-7	Severability
§15-217-8	Definition of terms
§§15-217-9 to 15-217-20	(Reserved)

Subchapter 2    Regulating Plan [~~and~~],  
Neighborhood Zones, and Incentive  
Zones

§15-217-21	Purpose
§15-217-22	Regulating plan
§15-217-23	Neighborhood zones
§15-217-24	Building types
§15-217-25	Frontage types
§15-217-26	Land uses
§15-217-27	Parks and open space plan
<u>§15-217-28</u>	<u>Incentive zones</u>
[ <del>§§15-217-28</del> ] <u>§§15-217-29</u> to 15-217-37    (Reserved)	

Subchapter 3    Thoroughfare Plan and Standards

§15-217-38	Purpose
§15-217-39	Thoroughfare plan and standards
§§15-217-40 to 15-217-50    (Reserved)	

Subchapter 4    Area-Wide Standards

§15-217-51	Purpose
§15-217-52	Applicability
§15-217-53	Building placement
§15-217-54	Building form
§15-217-55	Architectural design
§15-217-56	Landscape and recreation space
§15-217-57	Adequate infrastructure
§15-217-58	Large lots
§15-217-59	Green building
§15-217-60	Encroaching elements
§15-217-61	Flood zone
§15-217-62	Historical and cultural sites
§15-217-63	Parking and loading
§15-217-64	Conditional use of vacant land
§15-217-65	Public facilities dedication fee
[ <del>§§15-217-66 to 15-217-78</del> ] (Reserved)]	
<u>§15-217-66</u>	<u>Leased or sub-leased development</u>
<u>§15-217-67</u>	<u>Subdivision</u>

§§15-217-68 to 15-217-75 (Reserved)

Subchapter 5 Procedures

<del>§15-217-79</del>	<del>Rules clearance</del>
<u>§15-217-76</u>	<u>Zoning Clearance</u>
<u>§15-217-77</u>	<u>Temporary use permit</u>
<u>§15-217-78</u>	<u>Rules clearance</u>
<u>§15-217-79</u>	<u>Renovation Permit</u>
§15-217-80	Improvement and development permits
§15-217-81	Conditional use permit
§15-217-82	Variances
§15-217-83	Master plan
§15-217-84	Floor area ratio transfer
§15-217-85	Completeness review
§15-217-86	Automatic approvals
§15-217-87	Approval period
§15-217-88	Appeals
§15-217-89	Subsequent applications
§15-217-90	Minor changes
§15-217-91	Nonconformities
§15-217-92	Violations and enforcement
§15-217-93	Fee schedule
§§15-217-94 to 15-217-107	(Reserved)

Historical note: Chapter 15-217 is based upon chapter 15-22. [Eff 9/8/86, 1/28/88, 7/28/88, 12/10/88, 3/9/89, 7/8/89, 10/28/89, 1/29/90, 2/24/90, 7/26/90, 9/15/90, 10/3/94, 12/15/94, 8/14/95, 11/25/96, 1/25/97, 3/27/97, 6/13/97, 8/1/97, 9/19/97, 8/16/99, 1/13/00, 9/15/01, 6/13/05, R 11/11/11]

SUBCHAPTER 1

PURPOSE AND APPLICABILITY

**§15-217-1 Title.** (a) This chapter 217 of the Hawaii administrative rules shall be known, and may be cited, as the "Mauka Area Rules."

(b) References to "Rules" within this chapter are references to the Mauka Area Rules unless indicated otherwise. References to other regulations or provisions relevant to the Hawaii community development authority, where provided, are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure, or use from other regulations.

(c) The figures, dated [~~September 2011,~~  
\_\_\_\_\_, attached at the end of this chapter and the mauka area plan, dated \_\_\_\_\_, are hereby incorporated by reference and made a part of this chapter. [Eff \_\_\_\_\_] (Auth: HRS §§206E-5, 206E-7) (Imp: HRS §§206E-5, 206E-7)

**§15-217-2 Purpose.** (a) The mauka area plan establishes long-term land use policy, consistent with chapter 206E, HRS, that directs the implementation of smart growth principles within a portion of the Kakaako community development district. The mauka area plan also directs that implementation measures shall be calibrated according to the distinct characteristics of seven neighborhoods.

(b) The rules carry out, through complete, integrated, effective and concise land development regulations, the aforementioned mauka area plan directives by classifying and regulating the types and intensities of development and land uses within the mauka area consistent with, and in furtherance of, the



policies and objectives of the mauka area plan and chapter 206E, HRS.

(c) The rules are adopted to protect and promote the public health, safety, and general welfare of the community and to protect and preserve places and areas of historical, cultural, architectural, or environmental importance and significance, as set forth in the mauka area plan and chapter 206E, HRS. More specifically, the purposes of the rules are to ensure:

- (1) For the community:
  - (A) That neighborhoods and transit-oriented development is compact, pedestrian-oriented and mixed-use;
  - (B) That neighborhoods should be the preferred pattern of development;
  - (C) That ordinary activities of daily living occur within walking distance of most dwellings, allowing independence to those who do not drive;
  - (D) That interconnected networks of thoroughfares be designed to disperse traffic and reduce the length of automobile trips;
  - (E) That within neighborhoods, a range of housing types and price levels be provided to accommodate diverse ages, and incomes~~+~~, and abilities;
  - (F) That reserved housing should be distributed throughout the district to ~~match~~ promote job opportunities;
  - (G) That appropriate building densities and land uses be provided within walking distance of transit stops;
  - (H) That civic, institutional, and commercial activity should be embedded in neighborhoods, not isolated in remote single-use complexes;
  - (I) That schools be sized and located to enable children to safely walk or bicycle to them;

- (J) That existing and future industrial uses shall be permitted and encouraged in appropriate locations within the district;
  - (K) That a range of open space including parks, squares, plazas and playgrounds be distributed within neighborhoods; ~~[and]~~
  - (L) That the region should include a framework of transit, pedestrian, and bicycle systems that provide alternatives to the use of automobiles;
  - (M) That meaningful and authentic connections are made to this place and culture in order to uniquely identify this community; and
- (2) For the neighborhood zones:
- (A) That communities should provide meaningful choices in living arrangements as manifested by distinct physical environments; and
  - (B) That the neighborhood zone descriptions provided in section 15-217-23 (neighborhood zones) shall constitute the intent of these rules with regard to the general character of each of these environments within the mauka area; ~~[and]~~
  - (C) That neighborhoods are connected via a network of pedestrian, multi-modal, and cultural resources; and
- (3) For the block and the building:
- (A) That buildings and landscaping contribute to the physical definition of public walkways, sidewalks, and thoroughfares as civic places;
  - (B) That development ~~[respecting]~~ prioritizes the pedestrian and the spatial form of public areas;
  - (C) That the design of streets and buildings reinforce safe and accessible environments;

- (D) That architecture and landscape design grow from local cultural knowledge, materials, climate, topography, history, and building practice;
  - (E) That buildings provide their inhabitants with a clear sense of geography and climate through passive design strategies and energy efficient methods;
  - (F) That civic buildings and public gathering places be provided [~~as~~]in locations that reinforce community identity and support self-government;
  - (G) That civic buildings be distinctive and appropriate to a role more important than the other buildings that constitute the fabric of the city; and
  - (H) That the preservation and renewal of historic resources, places, and buildings be facilitated to affirm the continuity and evolution of society.
- [Eff                      ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-1, 206E-4, 206E-5, 206E-7)

**§15-217-3 Applicability.** (a) This chapter, together with the mauka area plan, shall govern all real property located within the mauka area. In case of any discrepancy between the provisions of this chapter and the mauka area plan, this chapter shall control.

(b) No building permit shall be approved by the Hawaii community development authority for any project within the mauka area unless the project conforms to the provisions of the mauka area plan and this chapter.

(c) No public improvement or project within the mauka area shall be initiated or adopted unless it conforms to and implements the mauka area plan and this chapter.

(d) Except as otherwise specifically provided, the provisions of this chapter shall supersede the provisions of the city and county of Honolulu's development plan (Ordinance No. 81-79, as amended by Ordinance No. 85-46 and Ordinance No. 04-14), the provisions of the Kakaako special design district ordinance, and the provisions of the land use ordinance as they all shall relate to properties within the mauka area. The foregoing ordinances are hereby declared to be inconsistent with this chapter, and shall therefore be inapplicable to developments within the mauka area unless otherwise specifically stated.

(e) Except as otherwise specifically stated in this chapter, all other rules, laws, and ordinances shall ~~[continue to]~~ remain applicable to the developments and properties within the mauka area. [Eff \_\_\_\_\_] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-4 Minimum requirements.** The provisions of the rules are minimum requirements for the protection and promotion of public health, safety, and welfare. Satisfaction of the minimum requirements does not mean that a decision-maker cannot impose additional requirements where authorized and appropriate and does not guarantee compliance with other rules, ordinance, or laws imposed by other governmental entities. [Eff \_\_\_\_\_] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-5 Rules of interpretation.** (a)  
Provisions of the rules are activated by "shall" when  
required; "should" when recommended; and "may" when  
optional.

(b) In addition to text-only contents of the rules, section 15-217-5 (rules of interpretation) shall also control related captions, titles, and figures.

(c) Terms not defined in section 15-217-8 (definitions of terms) shall be accorded their commonly accepted meanings. In the event of conflicts between these definitions and those found elsewhere within the Hawaii community development authority's administrative rules, these rules shall take precedence.

(d) The figures located herein are an integral part of the rules. However, Figures 1.11 to 1.16, dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter, are illustrative guidelines.

(e) Where in conflict, numerical metrics shall take precedence over graphic metrics.

(f) Words used in the singular include the plural; words used in the plural include the singular.

(g) Words used in the present tense include the future tense; words used in the future tense include the present tense.

(h) Within the rules, sections are occasionally prefaced with "purpose" or "intent" statements. Each such statement is intended as an official statement of legislative finding or purpose. The "purpose" or "intent" statements are legislatively adopted, together with their accompanying rules text. They are intended as a guide to the administrator and shall be treated in the same manner as other aspects of legislative history. However, they are not binding standards.

(i) In their interpretation and application, the provisions of the rules are considered minimal in nature. Whenever the provisions, standards, or requirements of HCDA's rules of practice and procedure and chapter 218 (reserved housing), Hawaii administrative rules, are higher or more restrictive, the latter shall control.

(j) Whenever the executive director determines that the meaning or applicability of any requirement of the rules is subject to interpretation generally, or as applied to a specific case, the executive director may issue an official interpretation. The executive director may also forward any interpretation

of the meaning or applicability of any provision of the rules directly to the authority for a determination at a public meeting:

- (1) The issuance of an interpretation shall include findings stating the basis for the interpretation. The basis for an interpretation may include but is not limited to technological changes or new industry standards. The issuance of an interpretation shall also include a finding documenting the consistency of the interpretation with the mauka area plan;
- (2) All interpretations shall be:
  - (A) Written and shall quote the provisions of the rules being interpreted, and the applicability in the particular or general circumstances that caused the need for interpretations, and the determination; and
  - (B) Distributed to the authority, executive director, and Hawaii community development authority staff;
- (3) Any interpretation of the rules by the executive director may be appealed to the authority in compliance with section 15-217-88 (appeals); and
- (4) Any provision of the rules that is determined by the executive director to need refinement or revision will be corrected by amending the rules as soon as is practical. Until an amendment can occur, the executive director will maintain a complete record of all interpretations to the rules, indexed by the number of the subchapter, section or subsection that is the subject of the interpretation.
- (k) If there is uncertainty about the location of any zone boundary shown on the regulating plan, the location of the boundary shall be determined by the executive director as follows:
  - (1) Where a zone boundary approximately follows a lot line, alley, or street line, the lot

- line, street or alley centerline shall be construed as the zone boundary, as applicable;
- (2) If a zone boundary divides a parcel and the boundary line location is not specified by distances printed on the regulating plan, the location of the boundary will be determined by using the scale appearing on the regulating plan; and
  - (3) Where a public thoroughfare or alley is officially vacated or abandoned, the property that was formerly in the street or alley will be included within the zone of the adjoining property on either side of the vacated or abandoned thoroughfare or alley.  
[Eff                      ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-6 Compliance with other regulations. (a)**

Whenever conflicting requirements are discovered in the application of the rules, they shall be resolved as follows:

- (1) Mauka area rules. If a conflict occurs between requirements within the rules, the most restrictive shall apply;
- (2) Mauka area plan. The provisions of the rules, when in conflict with the mauka area plan, shall take precedence;
- (3) Master plan. If conflicts occur between the requirements of the rules and standards adopted as part of any master plan, the requirements of the master plan shall apply; and
- (4) Private agreements. The rules apply to all real property located within the mauka area regardless of whether it imposes a greater or lesser restriction on the development or use of structures or land than a private agreement or restriction (for example, conditions, covenants and restrictions).

(b) The following provisions of the subtitle 219, title 15, apply within the mauka area and may be referenced herein:

- (1) HCDA's rules of practice and procedure; and
- (2) Chapter 218 (Kakaako reserved housing rules). [Eff \_\_\_\_\_] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-7 Severability.** These rules shall be liberally construed to protect and preserve the health, safety, and general welfare within the mauka area. Should any provision of the rules be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions. [Eff \_\_\_\_\_] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-8 Definition of terms.** This section provides definitions for terms in these rules that are technical in nature or that otherwise may not reflect a common usage of the term. If a term is not defined in this section, then the executive director shall determine the correct definition through the interpretation provisions of section 15-217-5 (rules of interpretation).

"Accessory building" means a building that is located on the same property, but physically separated from the principal building and is subordinate in size to the principal building, which may include swimming pool house, recreational facilities, and gazebos;

"Accessory dwelling" means a self-contained residential unit located on the same property as a front yard house, side yard house, or duplex-triplex-quadplex, which is either attached to the principal building or in a separate structure[~~+~~]. See Figure BT.1 (front yard house), dated \_\_\_\_\_, made part



of this chapter, and attached at the end of this chapter;

"Administrative" is a use classification for uses pertaining to the affairs of a business, profession, service, industry, government, or like activity, which may include ancillary services for office workers, such as a restaurant, coffee shop, or newspaper or candy stand;

"Alcohol sales" is a use classification pertaining to the sale of alcoholic beverages, whether for on-site or off-site consumption;

"Allee" means an evenly spaced and aligned double row of trees usually planted along a thoroughfare;

"Alley" means a service lane located to the rear of lots providing access to service areas, parking, and outbuildings and containing utility easements;

"Alternative fuel station" is a use classification pertaining to the retail sale of non-petroleum based motor vehicle fuel source including hydrogen, natural gas, biofuel, electricity supplied to charge or power electric vehicles, and lubricants to the public by direct delivery into the user's vehicle. May include incidental motor vehicle services such as supply of compressed air or water, and washing. Sale of food, beverages and related items is permitted in conjunction with this use;

"Alternative parking access street" means a street from which parking, driveways, curb cuts and other vehicular intrusions into the pedestrian realm should be allowed only when access to a parking access street is not possible. See Figure 1.10 (parking), dated ~~[September 2011,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Architectural encroachment" means an architectural feature that breaks the plane of a vertical or horizontal regulatory limit, extending into a setback, into the pedestrian zone, or above a height limit~~[+]~~, or beyond build to line;

"Artisan or craft production" is a use classification for the manufacturing and assembling of small products primarily by hand, including but not limited to clothing, furniture, jewelry, pottery and

other ceramics, small glass and metal art, taxidermists and craft products;

"Attic" means a portion of a building wholly or partly in the roof, so designated, arranged or built to be used for business, storage, recreation or habitation. Attic areas with a head room of less than seven feet shall not be included as floor area;

"Authority" means the Hawaii community development authority established by section 206E-3, HRS;

"Automobile rentals or sales" is a use classification primarily engaged in the rental, leasing or sales of new and used automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles and supplies, including storage of said vehicles;

"Automobile repair" is a use classification for the repair and maintenance services for motorcycles, passenger vehicles and trucks of all sizes. Typical repair and maintenance activities pertain to the tire, body, auto glass, radiator, transmission, motor tune-up, vehicle upholstery, and mufflers;

"Avenue" means a walkable, [~~low to medium (thirty to thirty-five mph)~~] urban arterial or collector thoroughfare, generally shorter in length than boulevards, serving access to abutting land. Avenues serve as primary pedestrian and bicycle routes and may serve local transit routes. Avenues usually provide curb parking;

"Awning" means a canopy that is supported entirely from the exterior wall of a building;

"Block" means the aggregate of lots, passageways, public spaces, and alleys bounded on all sides by thoroughfares;

"Block face" means the aggregate of the building facades on all of the lots on any given block;

"Block size" means the size of a block as measured in linear feet around the edges of the block at the lot line;

"Boulevard" means a means a walkable[~~, low-speed (thirty-five mph or less)~~] divided arterial thoroughfare designed to carry both through and local traffic, pedestrians and bicycles. Boulevards may be

high ridership transit corridors. Curb parking may be allowed on boulevards;

"Build to line" means a setback, parallel to the frontage line, which marks the location from which the ~~[principle]~~ principal vertical plane of the elevation must be erected. The build to line dimension is the distance from the lot line to the build to line;

"Building" means any permanently anchored structure used or intended for supporting or sheltering any use or occupancy;

"Building face" means the building elevation closest to and facing the abutting thoroughfare;

"Building type" means a form based classification that describes a particular type of building in terms of scale and design. See Figures BT.1 to BT.10, dated ~~[September 2011,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Building void" means the negative space that is created between the potential building envelope and the actual building, when upper floors of a building are set back from the maximum possible floor plate size to add depth and articulation. The building void is the difference between one hundred per cent and the floor plate ratio provided for each story as indicated on each of the building type pages. See Figure 1.12-C (illustrative building void and floor plate diagrams), dated ~~[September 2011,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Business Hotel" is a use classification for a building or groups of buildings primarily containing lodging or dwelling units used for transient accommodations, which main client segment reason for travel is business. The establishment shall not have a swimming pool, or other resort-style facilities;

"Civic" is a use classification which includes uses that foster community interaction and citizen participation in civic activities such as: meeting halls or clubhouse, conference centers, cultural facilities, public safety facilities, public or government facilities, libraries, religious facilities, and theaters;

"Civic building" means a building primarily used for civic or public uses;

"Civic space" means a form based classification of outdoor areas dedicated for public use. See Figure 1.11 (civic space), dated [~~September 2011,~~]

[REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Commercial" means the term collectively defining workplace, office, and retail functions;

"Common open space" means a portion of the lot landscaped and utilized for passive or active recreation but excluding permanent buildings, off-street parking areas, drive aisles, above-ground utility cabinet, boxes or structures and required side and rear setback area;

"Conference center" is a use classification for facilities designed to host conferences, exhibitions, large meetings, seminars, and training sessions;

"Cultural facilities" is a use classification for establishments such as museums, art galleries, botanical and zoological gardens, and other facilities of an historic, an educational, or a cultural interest;

"Curb" means the edge of the vehicular pavement that may be raised or flush to a swale and is usually incorporated into the drainage system;

"Dance-nightclub" is a use classification pertaining to establishments primarily engaged in the preparation and sale of alcoholic beverages for consumption on the premises in conjunction with a dance floor accompanied by prerecorded or live music;

"Day-care center" is a use classification pertaining to non-medical care for fifteen or more children or adults in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a twenty-four-hour basis. May include pre-schools, infant centers, and extended day-care facilities;

"Day-care home" is a use classification pertaining to [~~single-family~~] residences that are occupied and used as such in addition to providing

non-medical day-care on less than a twenty-four-hour basis to children or adults;

"Decision-maker" means either authority or executive director review of a permit or development application;

"Developable area" means the area within the lot lines of a parcel or a series of parcels, excluding setback areas;

"Developer" means a private person or an entity who has legal rights to perform or cause to be performed any ~~[man-made]~~ change over, upon, under, or across improved or unimproved real property within the mauka area;

"Developer's proposal to develop lands under the authority's control" as used in section 206E-5.6, HRS, shall mean and include any permit application filed by any private person or entity seeking the authority's approval for (1) a development; or (2) an improvement project on lands owned by the authority;

"Development" means and includes any ~~[man-made]~~ change over, upon, under, or across improved or unimproved real property ~~[performed on a lot greater than 20,000]~~ that totals 20,001 square feet or greater of site improvements or new floor area within the mauka area. Development shall not include a project consisting of a change in use, ~~[or]~~ interior renovations ~~[only]~~, changes that apply to section 15-217-78 rule clearances, or changes that apply to section 15-217-91 nonconformities;

"Development permit" means and includes a permit approved and issued by the authority authorizing any development;

"Disposition" means the placement of a building on its lot;

"Drive-through" means an establishment that permits customers to receive services, to obtain goods, or to be entertained while remaining in their motor vehicles;

"Driveway" means a vehicular lane within a lot, often leading to a garage~~[+]~~, parking structure, car park, or loading area;

~~"Dwelling" [means one or more rooms providing complete living facilities for one family, including kitchen facilities or equipment for cooking, and including a room or multiple rooms for living, sleeping, bathing, and eating;]~~ is a use classification pertaining to buildings, residences, structures, or enclosed spaces that is used for or intended for human habitation, shelter, living, and sleeping that is not a hotel;

"Dwelling unit" means one or more rooms, providing living facilities for one household, including kitchen facilities or equipment for cooking, toilet facilities, and including a room or multiple rooms for living, sleeping, bathing, and eating;

"Educational facilities" is a use classification pertaining to instruction or education, such as kindergarten; elementary, middle, or junior high school; high school; college; universities; or vocational schools;

"Eleemosynary organization" means a society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes, whose charter or other enabling act contains a provision that, in the event of dissolution, the land owned by such society, association, or corporation shall be distributed to another society, association, or corporation engaged in religious, charitable, educational, scientific, literary or other benevolent purposes;

"Elevation" means an exterior wall of a building not along a frontage line;

"Elevator shaft" means the area of the roof over the elevator shaft, when used for floor area calculation purposes.

"Encroachment" means any structural or architectural element that breaks the plane of a vertical or horizontal regulatory limit, extending into a setback, into the pedestrian zone, or above a height limit;

"Enfront" means to place an element along a frontage;

"Exceptional tree" means a tree that by reason of age, rarity, location, size, aesthetic quality, endemic status or historical and cultural significance is designated by the county arborist committee as worthy of preservation, pursuant to Act 105, SLH 1975, and the city and county of Honolulu exceptional tree ordinance. See the revised ordinances of Honolulu, chapter 41, article 13 - protective regulations for exceptional trees including the register of exceptional trees;

"Executive director" means the executive director of the Hawaii community development authority;

"Facade" means [the] any exterior wall, system of walls, or exterior glazing of a building that is [set] located along a frontage line;

"Facade string" means a row of facades along a street that are physically attached to each other;

"FEMA flood maps" means maps that set flood insurance rates, regulate floodplain development, and delineate "100-year" floodplain boundaries. FEMA flood maps contain flood zones that describe different levels of flood risk and elevation;

"Flat" means a dwelling that is confined to a single story;

"Floor area" means the sum of the gross horizontal areas of all floors of a building, including interior ~~[balconies and]~~ balconies, mezzanines, and storage areas[7] measured from the exterior face of exterior walls or from the centerline of a wall separating two structures.

- (1) Floor area shall include the area of roofed structures, building overhangs, canopies less than 50% open to sky, porches, [or lanai] lanais having more than [one wall and of] two walls, accessory structures on the same lot[-], above grade parking structures, covered loading driveway areas, mechanical and machine rooms, and elevator shafts. The area of roofed structures that are not enclosed by walls shall be measured from the exterior face of its supporting structure,

columns, posts, or the determined useable area it covers.

- (2) Floor area shall exclude stairwells[, elevator shafts parking facilities and loading spaces, including their driveways.] open on at least two sides with only handrailing or fall protection, basements and below ground structures, screening for rooftop machinery equipment, elevator housings on the rooftop, covered drop-offs located at or leading to the street curb, and lanais less than 15% of interior floor area;
- (3) Floor area shall exclude parking areas dedicated to electric vehicles and electric vehicle charging, long-term bike parking and storage that are located in structured parking garages, car sharing, and nonpetroleum based motor vehicles; and
- (4) Upon review and approval by the executive director, floor area may exclude robotic parking systems and its machinery, and other high efficiency parking systems;

"Floor area ratio" or "FAR" means the ratio of the total building floor area as expressed in square feet to the total land area as expressed in square feet. The FAR is determined by dividing the total floor area on a lot by the lot area of that lot[+]. FAR may be modified based on incentive zoning. See Figure IZ.1 (incentive zoning map), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Floor area ratio transfer credit" means a unit of measurement integral to section 15-217-84 (floor area ratio transfer) and which is established on a one-to-one basis between sending site(s) and a receiving site;

"Frontage" means the area between a building elevation and the vehicular lanes, inclusive of its built and planted components. Frontage is divided into two components: private frontage and public frontage;



"Frontage line" means a lot line bordering the public frontage. See Figure 1.14 (pedestrian zone treatment), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Frontage occupancy" means the minimum length of the principal frontage that must contain a building street front element. See Figure 1.13 (building placement and encroachments), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Frontage type" means a form based classification that describes a particular type of building face in terms of scale and architectural features. Frontage types facilitate pedestrian access to the principal entrance of a building. See Figures FT.1 to FT.12, dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Furnishing area" means the transition between the pedestrian thoroughway and the edge of the vehicular pavement. The furnishing area provides space for roadside appurtenances such as street trees, planting strips, street furniture, public art, sidewalk cafes, sign poles, signal and electrical cabinets, fire hydrants, bicycle racks and bus shelters. See Figure 1.14-A (section view illustrative pedestrian zone treatment), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Gas station" is a use classification pertaining to the retail sale of motor vehicle fuel and lubricants to the public by direct delivery into the user's vehicle and may include incidental motor vehicular services such as tire repair, battery charging, brake adjustment, motor tune-up and washing. Sale of food, beverages and related items is permitted in conjunction with a gas station;

"Grade" means the slope of a road, street, or other public way specified in percentage terms;

"Ground elevation" means the highest finished grade along the perimeter of the building;

"Group assembly" is a use classification for the gathering of people for activities including a music festival, carnival, show, circus, dance, exhibition, lecture, concert, rally, party, celebration, or similar activity which is open to the public or to which members of the public are invited or admitted either for a charge or free of cost;

"Group home" is a use classification pertaining to the use of any single-family residence or dwelling unit for a group residence where residents pay a fee or other consideration to the group home operator in return for residential accommodations. A group home includes a boarding home, a rooming house, as well as a group residence for the elderly, or mentally or physically disabled or handicapped persons, or other persons in need of care and supervision;

"Guideline" means a development provision that is suggested to further the intent and the mauka area plan and rules, but that is not compulsory;

"Habitable space" means space in a structure for living, sleeping, eating or cooking. Bathrooms, closets, halls, storage areas and utility spaces are not considered habitable spaces;

"Hawaii capital district" means a special district established by article 7 of the land use ordinance;

"Hawaii revised statutes" or "HRS" means the Hawaii Revised Statutes;

"Heavy industrial" is a use classification for industrial plants primarily engaged in manufacturing, compounding, processing, assembling, packaging, treatment, or fabrication of materials and products, primarily from extracted or raw or recycled materials. Uses in this classification generally are characterized by, among other things, truck traffic or outdoor storage of products, materials, equipment or fuel. Typical uses include battery manufacturing, welding, water softening plants, plating, ready-mix concrete plants, trucking terminals, and distribution facilities for commercial package services;

"Historical or culturally significant property" means any property that is:

- (1) Listed on the Hawaii or national register of historic places, pursuant to HRS; or
- (2) Designated in the mauka area plan as being significant in the history or prehistory, architecture, culture, or development of Kakaako or a tangible, historic or cultural linkage between Kakaako of the past and Kakaako of the present;

"Home occupation" is a use classification for work-related activities carried out in a dwelling unit for monetary gain by a resident. Home occupation is considered an accessory use in the resident's dwelling unit;

"Hospital" is a use classification pertaining to institutions providing health services, primarily for inpatients and medical or surgical care of the sick or injured, including related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices;

"Hotel" is a use classification for a building or groups of buildings primarily containing lodging or dwelling units used for transient accommodations. May include lobby, reception area, check-in counter or kiosk, restaurants, food services, retail spaces, fitness facilities, spa, and meeting rooms;

"Hotel Room" means one or more connected rooms providing lodging for transient accommodations. May include kitchen facilities or equipment for cooking, toilet facilities, and rooms for sleeping, bathing, and eating;

"Hydraulic lifts" means a parking method wherein mechanized lifts are used to lift one car above the ground so that another car can park underneath. May include robotic parking;

"Improvement permit" means and includes a permit approved and issued by the executive director authorizing any improvement project;

"Improvement project" means and includes:

- (a) any [~~man-made~~] change over, upon, under, or across improved or unimproved real property that comprises site improvements or new floor

area of 20,000 square feet or less [~~within the mauka area~~]; or

- (b) exterior alterations, excluding ordinary repairs and maintenance covered by a rules clearance; or

- (c) demolition of an existing structure;

"Incentive zoning" means allowing a developer to build a development, make improvements to real property, or make modifications to elements of a project that would not be permitted under existing zoning rules. In exchange, the developer provides community benefits that would not otherwise be required. Incentive zoning shall be only applied to identified areas. See Figure IZ.1 (incentive zoning map), dated [REDACTED], Figure IZ.2 (incentive table), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Indoor recreation" is a use classification pertaining to participant sports conducted within an enclosed building. Typical uses include bowling alleys, billiard parlors, pool halls, indoor ice or roller skating rinks, indoor racquetball courts, indoor batting cages, and health or fitness clubs;

"Kakaako community development district plan" means a collective term for the "Mauka Area Plan" and the "Makai Area Plan." Also, referred to as the "Kakaako Community Development Plan" or "Kakaako Plan";

"Kakaako special design district ordinance" means Ordinance No. 80-58 of the city and county of Honolulu, as amended by Ordinance No. 81-8;

"Lanai" means an accessory area to a dwelling, with one or more sides permanently open to the exterior except for a railing or parapet not exceeding four feet in height, with such open side or sides constituting at least twenty-five per cent of the perimeter thereof. Lanai are accessible solely from the dwelling to which it is appurtenant and may either be recessed elements with a roof continuous with the building roof, or they may be protruding elements added on to the face of a building;

"Land use" means a designation of land with approved uses that can legally operate on the parcel;

"Land use ordinance" or "LUO" means the land use ordinance adopted by Ordinance No. 86-96 of the city and county of Honolulu;

"Large lot" means a parcel or collection of parcels (developable area) equal to or greater than 140,000 square feet;

"Leadership in energy and environmental design" or "LEED" means a green building rating system developed by the U.S. Green Building Council that provides a suite of standards for the environmentally sustainable design, construction and operation of buildings and neighborhoods;

"Light industrial" is a use classification pertaining to manufacturing, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products and incidental storage and distribution of such products or parts, but excluding basic industrial processing classified under the heavy industrial. Typical uses include apparel manufacturing, machine shops, and furniture manufacturing;

"Liner building" means a building which masks or conceals a parking lot or a parking structure from a frontage;

"Live-work" means a mixed-use unit consisting of an office, or retail uses along with residential use. The residential function may be anywhere in the unit and is intended to be occupied by a business operator who lives in the same structure that contains the retail activity;

"Long-term bicycle parking" means a place to secure bicycles for eight to twenty four hours. Long-term bicycle parking can be provided through bicycle lockers, bicycle racks in enclosed areas, or space within a building;

"Lot" means a duly recorded parcel of land which can be used, developed or built upon as a unit;

"Lot line" means the boundary of a parcel of land, often expressed in metes and bounds;

"Lot width" means the length of the principal frontage line of a lot;

"Makai area" means that portion of the Kakaako community development district, established by section 206E-32, HRS, excluding the mauka area which is bounded by King Street; Piikoi Street from its intersection with King Street to Ala Moana Boulevard; Ala Moana Boulevard, exclusive, from Piikoi Street to its intersection with Punchbowl Street; and Punchbowl Street to its intersection with King Street;

"Makai area plan" means the development plan for the makai area of the Kakaako community development district adopted on September 29, 1998, as amended on November 27, 2002 and October 25, 2005;

"Mauka area" means that portion of the Kakaako community development district, established by section 206E-32, HRS, which is bounded by King Street; Piikoi Street from its intersection with King Street to Ala Moana Boulevard; Ala Moana Boulevard, exclusive, from Piikoi Street to its intersection with Punchbowl Street; and Punchbowl Street to its intersection with King Street;

"Mauka area plan" means the development plan for the mauka area of the Kakaako community development district originally adopted on February 16, 1982, as amended on January 10, 1983, May 18, 1984, September 6, 1984, April 26, 1985, August 17, 1985, July 15, 1988, June 28, 1989, January 18, 1990, July 16, 1990, September 5, 1997, August 3, 1999, June 1, 2005 and~~[+]~~ November 11, 2011;

"Mauka-makai" means the general orientation of mountains (mauka) to the ocean (makai);

"Mauka-makai axis" means the angle or orientation of the nearest of one of the following mauka-makai thoroughfares: Punchbowl, South, Cooke, Ward, or Piikoi. The mauka-makai axis is parallel to the nearest designated mauka-makai thoroughfare. In the case that the tower lies exactly in between two mauka-makai thoroughfares, the relevant mauka-makai axis shall be chosen by measuring from the closest point of that tower to each thoroughfare;

"Mauka-makai zone" means an area that is defined by planes extended from the edges of a tower along its mauka-makai axis (see Figure 1.6B (view preservation), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter);

"Maximum floor plate ratio" means the proportion of each floor that can occupy the total buildable floor area;

"Media production" is a use classification pertaining to areas for motion pictures, television, video, sound, computer, and other communications media production. These facilities include the following types:

- (1) Back lots or outdoor facilities. Outdoor sets, back lots, and other outdoor facilities, including supporting indoor workshops and craft shops;
- (2) Indoor support facilities. Administrative and technical production support facilities, including administrative and production offices, post-production facilities (editing and sound recording studios, foley stages, etc.), optical and special effects units, film processing laboratories, etc.; and
- (3) Soundstages. May also include buildings providing space for the construction and use of indoor sets, including supporting workshops and craft shops;

"Medical or dental clinic" is a use classification pertaining to a facility that contains one or more physicians or dentists, their assistants, and a laboratory or an apothecary limited to the sale of pharmaceutical and medical supplies. Shall not include inpatient care or major surgery;

"Mixed-use" means a combination of more than one use within a development project or lot;

"Multi-family" is a use classification pertaining to a building or buildings containing more than one dwelling and which may have joint services or facilities;

"Net site area" means all developable land within a project site including thoroughfares but excluding land allocated as civic zones;

"New building" means and includes the construction of a building including structural supports, walls and a roof;

"Nonconforming structure" means a building or structure that was lawfully erected prior to the effective date of the adoption or amendment of this chapter but no longer complies with all the regulations applicable to the mauka area as a result of adoption or amendment of this chapter or government action associated with eminent domain;

"Nonconforming use" means an activity using land, buildings or structures for purposes which were legally established prior to the effective date of the adoption or amendment of this chapter, but would not be permitted as a new use in any of the neighborhood zones established by this chapter;

"Open space" means space that is 100% open to the sky that is between or adjacent to a structure and located at-grade. The area must be publicly accessible and useable if provided on a podium, roof garden, or roof top recreation area;

"Outdoor recreation" is a use classification for recreational facilities operated for monetary profit or on a nonprofit basis and which typically include swimming pools, wading pools, tennis courts, badminton courts, basketball courts, other hard surface play areas, baseball and soccer fields, play equipment areas, and clubhouse;

"Park and recreation" means a land use classification under civic uses pertaining to parks and recreational facilities, including gymnasiums, playing fields, playgrounds, fountains, and swimming pools;

"Parking access street" means a street from which access to parking, driveways, curb cuts and other vehicular intrusions into the pedestrian realm should be located. See Figure 1.10-B (parking placement diagram), dated [~~September 2011,~~ REDACTED], made



a part of this chapter, and attached at the end of this chapter;

"Parking facility" is a use classification for off-street parking spaces for motor vehicles within or outside of a structure by either a private or public entity;

"Parking structure" means a building containing one or more stories of parking above grade;

"Parking zone" means the area within a block where parking is allowed. See Figure 1.10-B (parking placement diagram), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Passageway" means a pedestrian pathway, open or roofed, that serves as an extension of the sidewalk as it passes from the frontage line onto private property, often between or through buildings, to courtyards, parking areas or civic spaces. Passageways shall be no less than fifteen feet wide. If passageways are covered, they require a floor to ceiling height of at least two times their width, but no greater than three times their width;

"Passenger terminal" is a use classification pertaining to the provision of transportation of persons and goods. Typical uses include stations, depots, yards, dispatch centers or other facilities for bus services, train services or taxi services but exclude trucking terminals or moving and storage firms;

"Path" means a pedestrian way traversing a park, with landscape matching the contiguous open space;

"Pedestrian throughway" means the clear area for the pedestrian walkway area between the furnishing and private frontage areas. The throughway must provide a minimum horizontal and vertical clear zone area in compliance with ADA requirements. No furnishings or obstructions are allowed. See Figure 1.14-A (pedestrian zone treatment), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Pedestrian zone" means the zone between the building face and the curb. The elements of a

pedestrian zone are: the private frontage area, the pedestrian throughway area, and the furnishing area. See Figure 1.14-A (pedestrian zone treatment), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Pedestrian zone fixture" means street furniture, paving, and trees within the pedestrian zone, including street trees, planting strips, street lights, pedestrian lights, street furniture, public art, sign poles, fire hydrants, signal and electrical cabinets, bike racks, special pavement, and outdoor seating. See Figure 1.15 (pedestrian zone fixtures), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Personal services" is a use classification pertaining to services for the enhancement of personal appearance, cleaning, alteration or reconditioning of garments and accessories, and similar non-business related or nonprofessional services. Typical uses include reducing salons, tanning salons, barber shops, tailors, shoe repair shops, self-service laundries, and dry cleaning shops, but exclude uses classified under the office and vocational school;

"Plane break" means a horizontal or vertical recess or projection of a dimension specified by these rules particular to building elevations, including facades;

"Planting strip" means a planted and landscaped area accommodated within the furnishing area, intended to provide a buffer between pedestrians and vehicles;

"Porte cochere" means a covered parking area and driveway;

"Principal building" means the largest building on a lot, usually located toward the frontage;

"Principal entrance" means the main point of access for pedestrians into a building;

"Principal frontage" means the frontage designated to bear the address and principal entrance to the building, and the measure of minimum lot width as determined by the lot owner;

"Printing and publishing" is a use classification pertaining to printing by computer, letterpress,

lithography, gravure, screen, offset, or electrostatic (xerographic) copying; and other establishments serving the printing trade such as bookbinding, typesetting, engraving, photoengraving, and electrotyping. This includes establishments that publish newspapers, books and periodicals; establishments manufacturing business forms and binding devices;

"Private frontage" means the area of the pedestrian thoroughway area that is privately owned. The private frontage contributes to the character of the neighborhood, and includes the front of building, landscaping, and often a segment of the sidewalk;

"Project" means an endeavor undertaken by a landowner or developer to develop or improve a lot or combination of lots[+], buildings, or renovation of a building or structure;

"Project site" means the gross land area of a lot or a combination of lots for a proposed project;

"Promenade street" means a type of thoroughfare that promotes pedestrian activity by providing amenities such as wide sidewalks, street trees, street furnishings and reduced curb cuts. Promenade streets provide pedestrian connections between public open spaces and destinations;

"Public building" is a use classification pertaining to buildings owned or developed by public entities or developed on state-owned lands;

"Public facilities" means land, land area, structures or portions of structures, infrastructure, and utilities dedicated to perpetual public use and are publicly accessible;

"Public frontage" means the area of the pedestrian thoroughway area that is ~~[publically]~~ publicly owned. The public frontage contributes to the character of the neighborhood, and includes the sidewalk, landscaping and furnishings. See Figure 1.14 (pedestrian zone treatment), dated ~~[September 2011,]~~ [redacted], made a part of this chapter, and attached at the end of this chapter;

"Public project" means any project or activity of any county or state agency conducted to fulfill a

governmental function for public benefit and in accordance with public policy;

"Public realm" means the area of the pedestrian zone that is not contained within private lot lines;

"Public utility project" means any project or activity of any county or state agency conducted to upgrade or construct utilities, including sanitary sewer, drain lines, water, gas, electrical, telephone, cable, pedestrian facilities, and roadway systems;

"Receiving site" means the parcel or combination of parcels where floor area ratio transfer credits can be used to add development rights that have been severed from a sending site;

"Recreation space" means an outdoors or indoors open space within a development that can be located at any level and is available for recreational use;

"Recycling collection facility" means any indoor or outdoor space allocated to collecting and loading recyclable materials to be transported to a recycling center. May include bins, boxes, cans, kiosk type structures, and reverse vending machines;

"Regulating plan" means a zoning map which depicts the neighborhood zones, areas subject to regulation by this chapter and other pertinent portions of the authority's administrative rules;

"Religious facility" is a use classification pertaining to places of worship, including any church, synagogue, temple, mosque, or other building or facility, primarily engaged in religious worship. The term "Religious Facility" does not include uses, such as schools, recreational facilities, day-care or child care facilities, kindergartens, dormitories, or other facilities, for temporary or permanent residences, which are connected or related to the religious facility or the principal buildings on the site, or are located on the same site, even if the curriculum or services offered as part of such use includes religious services and/or training;

"Renovation permit" means and includes a permit approved and issued by the executive director authorizing any renovation project;

"Renovation project" means interior alterations, improvements, and modifications of an existing structure. Shall include electrical, mechanical, and plumbing work with no modifications to the exterior of the existing structure. May include additional floor area not to exceed twenty five percent of the existing floor area;

"Reserved housing" means housing as defined in chapter 218, title 15, Hawaii administrative rules;

"Residential" means premises available for human dwelling;

"Restaurant" is a use classification pertaining to of the sale of food and/or beverages in a ready-to-eat state for on-site or off-site consumption. Typically, there are tables, counters, benches, or other public seating facilities provided. Examples include a sit-down dining facility, fast-food restaurant (no drive-through), donut shop, pizza shop, cafe, bakery, cafeteria, coffee shop, lunchroom, delicatessen, and ice cream parlor. Includes micro-breweries as accessory to the restaurant;

"Retail sales" is a use classification pertaining to the sale of goods and merchandise;

"Right-of-way" means the area of a thoroughfare between private lot lines;

"Robotic parking" means a mechanized parking system which stores and retrieves vehicles in a compact storage facility;

"Roof" means a solid horizontal or angled man-made structure that provides covering and protection from natural elements, having less than 50% of the structure or protection open to the sky and natural elements;

"Secondary frontage" means on corner lots, the frontage that is not the principal frontage;

"Sending site" means the parcel or combination of parcels where floor area ratio transfer credits can be obtained in exchange for severing development rights;

"Service street" means a thoroughfare with two travel lanes and one parking-loading lane intended to provide vehicular access to lots. The pedestrian realm requires no front yard space and no trees;

"Setback" means the dimension between the building elevation and the lot line that must remain clear of any buildings or other structures with the exception of authorized encroachments;

"Shared parking" means a system in which the parking requirements for two or more uses are shared amongst each other, thereby resulting in reductions in the parking requirements;

"Short-term bicycle parking" means a place to secure bicycles for less than eight hours. Short-term bicycle parking can be provided through fixed bicycle racks or corrals for parking and locking bicycles, or storage facilities on the ground level near building entrances. Directional signage shall be provided for short-term bicycle parking not clearly visible from the sidewalk;

"Sidewalk" means the paved section of the pedestrian zone used or intended to be used exclusively for pedestrian activity;

"Single family" is a use classification pertaining to a single dwelling;

"Smart growth" means an urban planning theory that concentrates growth in the center of a city to avoid urban sprawl and advocates compact, transit-oriented, walkable, bicycle-friendly land use, including complete streets, and mixed-use development with a range of housing choices;

"Special flood hazard area" means a designation by the Federal Emergency Management Agency ("FEMA") that may include the V (velocity) zones and coastal A zones where building construction is forbidden, restricted, or contingent upon raising the building to the base flood elevation;

"Standard" means a development regulation that is required, rather than discretionary;

"Stepback" means a building setback of a specified distance that occurs at a prescribed number of stories above the ground;

"Story" means a level within a building that can be used for living, work, storage, or recreation, excluding an attic or raised basement;

"Street" means a walkable, low speed (twenty-five miles per hour) thoroughfare primarily serving abutting property. A street is used to connect neighborhoods within the district. Streets emphasize curb parking;

"Street front element" means the portion of a building that primarily sits along a build to line and creates a street wall that frames the street;

"Street screen" means a freestanding wall built along the frontage line, or coplanar with the facade. It may mask a parking lot from the thoroughfare, provide privacy to a side yard, or strengthen the spatial definition of the public realm;

"Structure" means anything constructed or erected with a fixed location on the ground, including buildings, walls, swimming pools, and signs;

"Swale" means a low or slightly depressed natural area for drainage;

"Tandem parking" means two cars parked nose to end, one in front of the other;

"Temporary parking" means parking establish for a fixed period of time with the intent to discontinue such parking upon the expiration of such time. Temporary parking does not involve the construction or alteration ~~[an]~~ of any permanent structure;

"Temporary use" is a use classification approved by the executive director for a fixed period of not more than fourteen consecutive days within a ninety day period, and does not involve the construction or alteration of any permanent structures;

"Temporary use permit" means and includes a permit approved and issued by the executive director authorizing any temporary use and associated structures;

"Theater" is a use classification pertaining to performance theaters, movie theaters, and amphitheaters;

"Thoroughfare" means a way or passage used by vehicular, bicycle and pedestrian traffic. Thoroughfares consist of vehicular lanes and the pedestrian zone and provide access to lots and open spaces;

"Thoroughfare plan" means a component of the mauka area rules that shows planned changes to existing thoroughfares and the general location of planned new thoroughfares. See Figure 1.4 (thoroughfare plan), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Transit-oriented development" means a mixed-use area intended to maximize access to public transport; often incorporating features to encourage transit ridership;

"Urbanism" means collective term for the condition of a compact, mixed-use settlement, including the physical form of its development and its environmental, functional, economic, and socio-cultural aspects;

"View corridor street" means a thoroughfare identified in the mauka area plan, where special design and development standards are required to protect views to the mountains and to the ocean. See Figure 1.6A (view corridors), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;

"Vocational school" is a use classification pertaining to training in a skill or trade to be pursued as a career;

"Warehousing" is a use classification pertaining to the wholesaling, storage, moving or bulk distribution of goods other than live animals. Typical uses include wholesale distributors, storage warehouses, and moving and storage firms;

"Workforce housing project" means new residential project as defined in chapter 218, title 15, Hawaii administrative rules;

"Zone" means the area or district of the mauka area through which these rules are organized; and

"Zoning Clearance" means and includes a permit approved and issued by the executive director authorizing that a proposed use is consistent with the established land use district.

"Zoning map" means the official map or maps that are part of the mauka area rules and delineate the



boundaries of individual zones and districts (see regulating plan). [Eff ] (Auth: HRS §§206E-2, 206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-2, 206E-4, 206E-5, 206E-7)

§§15-217-9 to 15-217-20 (Reserved) [-]

## SUBCHAPTER 2

### REGULATING PLAN ~~[AND]~~, NEIGHBORHOOD ZONES, AND INCENTIVE ZONES

**§15-217-21 Purpose.** This subchapter establishes the neighborhood zones within the mauka area, adopts the regulating plan for the mauka area as its zoning map, adopts the parks and open space plan as an overlay to the regulating plan, ~~[and]~~ establishes standards applicable to neighborhood zones, and establishes incentive zones that may utilize modifications to the rules that would not be otherwise permitted. [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-22 Regulating plan.** The mauka area rules regulating plan (hereafter referred to as the "Regulating Plan"), included as Figure 1.2 (regulating plan), dated ~~[September 2011,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter, identifies the neighborhood zones provided in section 15-217-23 (neighborhood zones). [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-23 Neighborhood zones.** (a) The regulating plan is divided into neighborhood zones corresponding to the mauka area plan. These

neighborhood zones and their corresponding development and use rules and guidelines are as follows:

- (1) Civic center zone (see Figure NZ.1 (civic center), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter). The civic center neighborhood zone is located adjacent to the Hawaii capital district. The civic center zone will be characterized by civic buildings in campus-like settings with reduced building heights to respect the scale of existing historic resources both within and adjacent to the zone. Significant landscaping features will be retained and enhanced through new plantings;
- (2) Kapiolani zone (see Figure NZ.2 (Kapiolani), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter). The Kapiolani zone will be a central corridor providing for mixed-use buildings including ground floor commercial retail and services, and office and residential uses on upper floors;
- (3) Thomas square zone (see Figure NZ.3 (Thomas square), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter). The Thomas square zone will continue as a civic focal point for the mauka area through its civic buildings and uses facilitating educational, performance and entertainment endeavors. Buildings will be provide large setbacks and with complementary mature landscaping;
- (4) Sheridan zone (see Figure NZ.4 (Sheridan), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter). The Sheridan zone will consist predominately of a residential neighborhood with [markedly] lower scale buildings when compared to the remainder of

the mauka area. However, commercial uses will continue along King, Pensacola, and Piikoi Streets; preferably within mixed-use building with upper floors of residential or office uses;

- (5) Central Kakaako zone (see Figure NZ.5 (central Kakaako), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter). The central Kakaako zone will support the continued operation of service businesses including those which are industrial such as repair shops and manufacturing or distribution, as well as residential mixed-use projects within its zone. Inadequate infrastructure will be repaired or upgraded to adequately support existing and planned development and uses;
- (6) Pauahi zone (see Figure NZ.6 (Pauahi), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter). The Pauahi zone will transition into a mixed-use urban village of significantly increased building heights and density. The Pauahi neighborhood will also continue to provide important link from the makai area of Kakaako's waterfront up toward mauka. Walkability will be improved through the insertion of new thoroughfares or passageways; and
- (7) Auahi zone (see Figure NZ.7 (Auahi), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter). The Auahi zone will function as Kakaako's main retail, restaurant and entertainment area. Changes to existing building forms will better accommodate pedestrians by relegating vehicles to less prominent positions. Additionally, new thoroughfares or passageways will reduce block sizes and, consequently, further increase pedestrian orientation.

(b) Standards applicable to neighborhood zones. All development, use, and construction within the neighborhood zones shall conform to the standards set forth in Figure 1.3 (development standards summary), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter, and Figures NZ.1 to NZ.7, dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter, which allocate building type, frontage type, building placement, building form, land use, allowed height, build to line, and parking access.

(c) Standards applicable to entire mauka area. The standards applicable to each neighborhood zone, building type or frontage type may be further modified by subchapter 4 (area wide standards).

[Eff [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

**§15-217-24 Building types.** All buildings shall conform with the building standards set forth in Figures BT.1 to BT.10, dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter, which specify lot and facade width, access, parking, open space, landscaping, frontage types, and building massing standards to each building type. [Eff [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-25 Frontage types.** All buildings shall conform with the frontage standards set forth in Figures FT.1 to FT.12, dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter, which specify dimension and element standards for each frontage type. [Eff [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-26 Land uses.** (a) Buildings and lots in each neighborhood zone shall conform to the land uses specified in Figure 1.9 (land use), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter.

(b) Any one or more allowed land uses may be established on any lot, subject to Figure 1.9 (land use), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter.

(c) Where a single lot is proposed for development with two or more land uses listed in Figure 1.9 (land use), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter, the project shall be subject to the permit with the highest level of discretionary review. [Eff [REDACTED]] (Auth: HRS §206E-7) (Imp: HRS §206E-7)

**§15-217-27 Parks and open space plan.** (a) The mauka area rules parks and open space plan (hereafter referred to as the "Parks and Open Space Plan"), modifies or maintains the underlying standards of any applicable neighborhood zone, building type, frontage type or land use, as provided for in this section.

(b) Each park and open space shall be designed as described in Figure 1.11 (civic space), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter.

(c) Any improvement project performed on any park or open space shall require the executive director's approval of a rules clearance pursuant to section 15-217-~~[79]~~78 (rules clearance), without public hearing, when in compliance with all standards of this chapter.

(d) Overlay provisions. The following standards apply to the parks and open space plan:

- (1) Neighborhood zone standards. Parks and open space areas are indicated on Figure 1.5 (parks and open space plan), dated

~~[September 2011,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter. These areas shall be retained as open space or parks as indicated. Any building in these areas shall be located according to the building placement indicated on Figures NZ.1 to NZ.7, dated ~~[September 2011,]~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter;

- (2) Building type standards. A lot or portion of a lot designated parks and open space on the parks and open space plan shall only accommodate civic, institutional, or community-related buildings that are subordinate to and serve the open space or parks areas only while articulating diversity, difference, social cohesion, participation, and representation in the neighborhood where they are placed;
- (3) Frontage type standards. A lot or portion of a lot designated parks and open space on the parks and open space plan is not required to include any of the permitted frontage types indicated in the rules, however, these areas may include any of the permitted frontage types on buildings that are subordinate to and serve the open space or parks areas;
- (4) Land use:
  - (A) Permissible land uses within a lot or portion of a lot designated parks and open space on the parks and open space plan shall be limited to the following classifications:
    - (i) Assembly;
    - (ii) Cultural facilities;
    - (iii) Park and recreation;
    - (iv) Government facilities;
    - (v) Educational facilities;
    - (vi) Outdoor recreation;
    - (vii) Indoor recreation; and

- (viii) Theater; ~~[and]~~
  - (ix) Urban garden and food production; and
- (B) Permissible land uses within a lot or portion of a lot designated parks and open space on Figure 1.5 (parks and open space plan), dated ~~[September 2011,]~~ [redacted], made a part of this chapter, and attached at the end of this chapter, shall be limited to the following classifications:
  - (i) Continuance of a legal conforming land use, if present at the time of the rules effective date;
  - (ii) Any land use classification provided for the applicable neighborhood zone; or
  - (iii) When acquired by the authority and redeveloped into a civic space consistent with Figure 1.11 (civic space), dated ~~[September 2011,]~~ [redacted], made a part of this chapter, and attached at the end of this chapter, or prior to such redevelopment, any of those uses provided by section 15-217-27(d)(4)(A) (parks and open space plan); and
- (5) Subchapter 4 (area wide standards). All provisions of subchapter 4 shall apply to parks and open space on Figure 1.5 (parks and open space plan), dated ~~[September 2011,]~~ [redacted], made a part of this chapter, and attached at the end of this chapter. [Eff [redacted]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-28 Incentive zones.** (a) The purpose of establishing incentive zones is to encourage the development of public benefits on project sites that may not have been otherwise required in exchange for approved development bonuses. These bonuses may take the form of modifications to building forms, increased floor area ratio, or other items approved by the decision-maker.

(b) Development bonuses may increase the maximum density FAR of each neighborhood zone, not to exceed a total FAR of 10.0, subject to compliance with section 15-217-57 Adequate infrastructure.

(c) Development bonuses may only be used on lots identified within the mauka area and indicated in Figure IZ.1 Incentive zoning map, dated [ ], made part of this chapter, and attached at the end of this chapter.

(d) Only development bonuses identified in Figure IZ.2 Incentive table and Figure IZ.2.1 Approved Public Facilities, dated [ ], made a part of this chapter, and attached at the end of this chapter may be applied to projects on lots identified in Figure IZ.1 Incentive zoning map, dated [ ], made part of this chapter, and attached at the end of this chapter.

(e) The additional floor area generated by incentive zoning shall be exempt from public facilities dedication fees listed in section 15-217-65. In projects where building forms are modified from what would otherwise be allowed, the exempt floor area should be the difference in floor area between what is otherwise allowed minus the floor area generated by the incentive zoning. [Eff ]  
(Auth: HRS §§206E-4, 206E-4.5, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

~~[§15-217-28]~~ §15-217-29 to 15-217-37  
(Reserved).

### SUBCHAPTER 3



THOROUGHFARE PLAN AND STANDARDS

**§15-217-38 Purpose.** (a) To translate the urban road classifications defined in the mauka area plan into standards for the pedestrian zone.

(b) To prioritize the pedestrian over vehicular transportation modes in thoroughfare planning and design, through the provision of ample sidewalk amenities and a hierarchy of sidewalk sizes.

(c) To provide standards for promenade streets and view corridors. [Eff: \_\_\_\_\_] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-39 Thoroughfare plan and standards.** (a) The mauka area rules thoroughfare plan (hereafter referred to as the "Thoroughfare Plan"), shall consist of: Figure 1.4 (thoroughfare plan), dated [September 2011] \_\_\_\_\_, made a part of this chapter, and attached at the end of this chapter; Figures 1.7A and 1.7B (street tree plan and charts), dated [September 2011] \_\_\_\_\_, made a part of this chapter, and attached at the end of this chapter; Figure 1.14 (pedestrian zone treatment), dated [September 2011] \_\_\_\_\_, made a part of this chapter, and attached at the end of this chapter; Figure 1.15 (pedestrian zone fixtures), dated [September 2011] \_\_\_\_\_, made a part of this chapter, and attached at the end of this chapter; and Figures PZ.1 to PZ.7 (pedestrian zone treatment), dated [September 2011] \_\_\_\_\_, made a part of this chapter, and attached at the end of this chapter.

(b) Applicability:

- (1) The standards provided in the thoroughfare plan shall be applicable to all existing and proposed thoroughfares within the mauka area plan, except for that portion of the right-of-way that falls within the curb to curb area. The authority will rely upon the

- mauka area plan to determine the curb to curb attributes of thoroughfares;
- (2) Design conflicts between vehicular and pedestrian movement in new thoroughfares shall be generally decided in favor of the pedestrian, unless there is overriding public interest which dictates that the conflict be resolved in favor of vehicular movement[+]. Flexibility in implementing the thoroughfare plan and standards may be provided to allow for consistency with the city and county of Honolulu's standards and Complete Streets Design Manual; and
  - (3) Developments and improvement projects shall be required to comply with the thoroughfare plan, if applicable to their frontage type. Development or improvement projects as well as additions to existing buildings shall be required to comply with the thoroughfare plan if the value of the changes or renovations to the property are greater than or equal to fifty per cent of the replacement value of the existing improvements.
- (c) General to all thoroughfares:
- (1) With the exception of service streets, alleys and streets with a right-of-way measuring forty feet or less, every thoroughfare shall have street trees planted along their length within the public frontage area. Service streets and alleys may include street trees, subject to the executive director's determination of size, location and species; and
  - (2) Requirements presented in the rules for promenade streets shall take precedence over other requirements presented for the thoroughfare type.
- (d) Pedestrian zone:
- (1) The pedestrian zone is distinguished and organized according to three functional categories: furnishing area, pedestrian

throughway area, and private frontage area. Portions of this zone may be publically-owned or privately-owned. Pedestrian zone standards shall apply to all thoroughfares as shown in Figure 1.4 (thoroughfare plan), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter, unless otherwise noted in the rules;

- (2) Pedestrian zones in each neighborhood shall comply with the requirements set forth in Figures PZ.1 to PZ.7, dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter;
- (3) Special paving (differentiated by texture, color, patterned brick, or stone) may be used in the pedestrian zone, especially along promenade thoroughfares, but must be reviewed and approved by the executive director;
- (4) All thoroughfares except service streets and alleys should have pedestrian zone fixtures provided that they should be placed within the furnishing zone, as indicated in Figures 1.14 (pedestrian zone treatment) and 1.15 (pedestrian zone fixtures), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter;
- (5) Pedestrian zone fixtures shall be placed within the furnishing area as shown in Figures PZ.1 to PZ.2, dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter;
- (6) All pedestrian zone fixtures shall be at least two feet from the curb edge; and
- (7) Waste receptacles should be located in close proximity to seating areas provided.
- (e) Street trees and landscaping:
  - (1) Street trees shall be planted in a

~~[regularly spaced]~~ pattern ~~[of a single species]~~ which produces the maximum amount of shade while not impeding the visibility of pedestrians or vehicles, native or adapted species appropriate to the location, disease resistant, appropriate to the climate, and with shade canopies of a height that at maturity, clears at least one story as per Figures 1.7A and 1.7B (street trees), dated [September 2011, ] , made a part of this chapter, and attached at the end of this chapter;

- (2) Where the terrace front frontage type is used, trees shall be included within the lot lines that are aligned with trees in the public ~~[pedestrian zone]~~ furnishing and encroachment zone to form a double row of ~~[tress]~~ trees (i.e., an allee pattern) along the sidewalk;
- (3) When the shopfront frontage type is used, street trees shall be maintained to avoid visually obscuring the shopfronts and their accompanying signage; and
- (4) Landscaping adjacent to sidewalks shall be free from spiky plants, rapidly growing vines, and other landscaping that may cause harm to pedestrians.
- (f) Street lighting:
  - (1) On promenade streets, a pedestrian tier lamp on the sidewalk side, such as the decorative street light fixture ensemble 'A' in Figure 1.15-B (pedestrian zone fixtures), dated ~~[September 2011, ]~~ , made a part of this chapter, and attached at the end of this chapter, shall be used; provided, however, that the executive director may approve an alternative light fixture of similar height, design and lighting characteristics;
  - (2) On boulevards, avenues and streets, other than promenade streets, a light fixture such as the special design fixture ensemble 'B'

in Figure 1.15-C (pedestrian zone fixtures), dated [~~September 2011~~], [REDACTED], made a part of this chapter, and attached at the end of this chapter, shall be used; provided, however, that the executive director may approve an alternative light fixture of similar height, design and lighting characteristics; and

- (3) Street lighting shall illuminate both the sidewalk and vehicular lanes, especially along promenade streets.
- (g) Planting strip:
  - (1) Planting strips may be accommodated within the furnishing zone, as indicated in Figures PZ.1 to PZ.7, dated [~~September 2011~~], [REDACTED], made a part of this chapter, and attached at the end of this chapter;
  - (2) Planting strips may be designed to have a variety of materials such as cobbles, river pebbles, planting, permeable pavers, or compacted stonedust, for a permeable surface;
  - (3) Planting strips designed to incorporate bio-swales or water retention areas to mitigate stormwater runoff are encouraged;
  - (4) Planting strips may project beyond the curb edge to create breaks in the street parking. These projections are encouraged to be designed as a pattern along the entire street length; and
  - (5) Vegetation within planting strips should be native, disease resistant, and appropriate to the climate[~~-~~] and location. Edible plants are encouraged.

(h) Promenade streets. In addition to the criteria relating to promenade streets presented in the rules, thoroughfares designated as promenade streets shall be constructed as indicated in Figures PZ.1 to PZ.7, dated [~~September 2011~~], [REDACTED], made a part of this chapter, and attached at the end of this chapter. [Eff [REDACTED]] (Auth: HRS

§§206E-4, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

§§15-217-40 to 15-217-50 (Reserved).

#### SUBCHAPTER 4

##### AREA-WIDE STANDARDS

**§15-217-51 Purpose.** (a) This subchapter provides standards that:

- (1) Apply throughout the mauka area; and
- (2) Either supplement or modify other standards provided elsewhere in the rules.

(b) This subchapter concisely organizes standards by topic in order to ease the understanding and application of its provisions. [Eff ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-52 Applicability.** This subchapter applies to all permit applications and use classifications, except where a section provides otherwise. [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-53 Building placement.** (a) Facades shall be built parallel to a build to line with a minimum frontage occupancy as per table subsection (c) of Figure [1-13-C] NZ.1-NZ.7 (building placement [and encroachments]), dated [September 2011, ], made a part of this chapter, and attached at the end of this chapter.

(b) Wherever a build to line is [equal to or] greater than fifteen feet, a terrace front frontage type (see Figure FT.8 (terrace front), dated

[~~September 2011,~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter) shall be used.

(c) For frontage occupancy calculations, single buildings that form a courtyard of fifteen feet in width or less by recessing a portion of the building from the build to line shall be measured as the full width of the building parallel to the build to line.

[Eff [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-54 Building form.** (a) The height of any building or structure or portion thereof shall be measured from ground elevation.

(b) Height limits for attics or raised basements, masts, belfries, clock towers, chimney flues, elevator bulkheads, church spires, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, railings, or necessary mechanical appurtenances on the roof level shall be limited to the height necessary for their proper functioning. The executive director shall make the final determination on the height necessary for their proper functioning. Attics shall not exceed fourteen feet in height.

(c) Where the floor plate ratio identified in Figures BT.1 to BT.10, dated [~~September 2011,~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter, indicate a value of less than one hundred per cent, the remainder value of setback area is considered the building void (see Figure 1.12-C (illustrative building void and floor plate diagrams), dated [~~September 2011,~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter). At least twenty-five per cent of the building void, in plan, shall be located along the facade and have a minimum depth of ten feet, as measured from the facade toward the rear lot line; provided, however, that this minimum depth from the facade shall be increased by three feet for every ten feet of building height.

~~— [(d) Any part of a building which is taller than sixty five feet and fronting a view corridor street (see Figure 1.6A (view corridors), dated September 2011, made a part of this chapter, and attached at the end of this chapter) shall be setback from the lot line abutting the view corridor by fifty feet.]~~

~~[(e)]~~ (d) Except in the Sheridan neighborhood zone, all ground floors shall be at least twelve feet tall along all thoroughfares.

~~[(f)]~~ (e) All new principal buildings shall be designed with a street front element conforming to Figure 1.3-D (development standards summary - building form), dated ~~[September 2011, ]~~ , made a part of this chapter, and attached at the end of this chapter. See Figure 1.12-A (illustrative building form diagram), dated ~~[September 2011, ]~~ , made a part of this chapter, and attached at the end of this chapter, for an illustrative example of a street front element. [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-55 Architectural design.** (a) Awnings, trellises and canopies:

- (1) The use of vinyl or plastic awnings, trellises and canopies is prohibited along promenade streets and view corridor streets;
- (2) Awnings, trellises, and canopies shall comply with Figure 1.13 (building placement and encroachments), dated ~~[September 2011, ]~~ , made a part of this chapter, and attached at the end of this chapter;
- (3) Awnings, trellises, and canopies shall not obstruct views of pedestrian-oriented signage (e.g., blade sign) for shops and businesses; and
- (4) The location of awnings on a facade shall be of a consistent height. Similarly, the location of awning on a facade shall generally align with those on adjacent buildings, to the extent practicable.



- (b) Balconies:
  - (1) Balconies shall be accessible from inside the building;
  - (2) Balconies shall not be completely enclosed;
  - (3) Balconies shall comply with Figure 1.13 (building placement and encroachments), dated [~~September 2011,~~ REDACTED], made a part of this chapter, and attached at the end of this chapter; and
  - (4) For floors one through five, balconies adjoining dwellings within multi-family buildings shall have a minimum depth of at least five feet.
- (c) Buildings with auto rental or sales uses:
  - (1) Applicability. This subsection shall apply to all existing and new principal buildings used or intended to accommodate auto rental or sales and/or auto repair land use classifications;
  - (2) Showrooms shall be located at the frontage line and include a minimum fenestration value of seventy-five per cent at the first floor of the facade;
  - (3) Vehicle repairs shall occur within a separate building located behind the principal building or portion of a principal building located behind the showroom; provided, however, that vehicle repairs may be located within floor area at a frontage line abutting a primary parking street;
  - (4) Service bays shall not be visible from an abutting alternative parking access street or promenade street;
  - (5) Pedestrian pathways shall lead pedestrians from the public sidewalk and customer parking areas to the vehicle showroom and service areas;
  - (6) Service bays, vehicle displays or storage areas shall be screened from view from abutting thoroughfares through building placement, landscaping, fencing, and/or decorative walls; and

- (7) Water efficient landscaping and low accent walls between two to three feet in height shall be installed along all outdoor displays and parking lot perimeters.
- (d) Storm water drainage. Rainwater shall be diverted away from sidewalks through downspouts visible on the rear building elevation, internal drain pipes, or through awnings or canopies.
- (e) Fences, walls, and hedges:
  - (1) Fences, walls, and hedges may be constructed or installed to a height of six feet in any side yard or rear yard and to a height of four feet in any portion of a front yard or a side yard that faces a thoroughfare, except where the rear yard or side yard abuts a parking lot or industrial use, a maximum six-foot tall fence, hedge or wall is permitted;
  - (2) Retaining walls shall be constructed out of masonry or stone or another equally durable material;
  - (3) Fences shall be constructed out of ornamental iron, steel, wood pickets and/or a synthetic wood product (such as wood-filled Recycled plastic lumber) and may have stucco or masonry piers;
  - (4) Chain link, barbed wire, vinyl, plastic or exposed cinder block walls are prohibited within front yards [~~abutting any boulevard, avenue, or promenade street~~]; and
  - (5) Fences in front yards or side yards facing a thoroughfare shall be painted or constructed out of a decorative material compatible with the materials of the principal building;
  - (6) Walls and fences for public utilities may be constructed up to eight feet in height and topped with security wire to a height of ten feet.
- (f) Lighting:
  - (1) Entrances, arcades and passageways shall be illuminated;
  - (2) Courtyards, passageways, roof gardens,

corner plazas, and other landscaped areas shall provide pedestrian-scaled, tamper-proof lights;

- (3) Lighting sources shall be constructed or installed so that light is aimed downwards and does not spill over to abutting properties;
- (4) Lighting that is visible from adjacent properties or thoroughfares shall be indirect or incorporate full shield cut-offs;
- (5) Incandescent exterior lights and high-pressure sodium lights are prohibited; and
- (6) Architectural details may be accented through lighting.

~~[(g) Building facade and elevation materials. A change of exterior texture and material shall be accompanied by a change in plane. However, glazing and spandrel glass is exempt from this provision.]~~

~~[(h)]~~ (g) Roofs:

- (1) Roofs may be accessible and used as roof decks, gardens, balconies or terraces;
- (2) Roofs shall be finished with light colors for reflectivity or incorporate landscaping; and
- (3) Roof top mechanical equipment shall be clustered away from the edge of the building and either painted to match the roof top or located behind a parapet wall or in a roof top mechanical equipment enclosure so that it is not visible from a thoroughfare, historic or public buildings.

~~[(i)]~~ (h) Service functions:

- (1) Utilities, service elements, recycling and trash elements shall be located off alleys (where present), or in structured parking garages where they exist. Alternatively, they may be located at least ten feet behind the facade of a principal building or screened from view from a thoroughfare other than an alley or service street, with a

- hedge, landscaping, low wall, or fence;
- (2) Prohibited materials for constructing recycling or trash enclosures include: chain link, fencing with slats mesh screen, cinderblocks, or unpainted wood;
- (3) Utilities and service elements that are visible from thoroughfares other than alleys shall be incorporated in the building structure in a manner accessible to the trash collection service provider, ~~[but shall not be visually intrusive through]~~ <sup>[+]</sup> and should use ~~[of]~~ the following strategies to avoid being visually intrusive:
  - (A) Burying or screening underground (utility wires, meters, transformers);
  - (B) Incorporation into the building or parking garage as a utility room (meters, transformers);
  - (C) Screening behind building (meters, terminal boxes); and
  - (D) Clustering on roof within a mechanical enclosure (HVAC); and
- (4) Recycling or trash enclosures shall be of a similar material and color with the principal building.

~~[(j)]~~ (i) Signage. All signs shall be in compliance with the applicable rules and regulations administered by the city and county of Honolulu, as provided for in the city and county of Honolulu's land use ordinance, as it may be amended from time to time. Where possible, signage shall be in the two official languages of Hawaii, Hawaiian and English.

- ~~[(k)]~~ (j) Windows:
- (1) Highly-reflective, and mirrored ~~[, and opaque window]~~ glazing are prohibited;
  - (2) Window glazing shall be transparent with clear or limited UV tint so as to provide views out of and into the building. Visible light transmission level of windows on the ground floor shall be seventy per cent or greater and on all other floors the visible light transmission level shall be fifty per

cent or greater[+]. The executive director may provide flexibility to the strict compliance with these visual light transmission level requirements if conflicts exist with other government requirements, such as the State Energy Code;

- (3) For floors one through ten, all principal windows in a residential building [windows] shall be operable;
- (4) Vinyl window frames are prohibited, except for Figures BT.1 to BT.3, dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;
- (5) Pop-in muntins are prohibited below the third floor; and
- (6) Window grilles are prohibited except at window openings to podium parking or on building elevations facing alleys or service streets.

[+1+] (k) View preservation:

- (1) Mauka and makai views to the mountains and the waterfront shall be preserved through orientation of towers with the long side of the tower parallel to the mauka-makai axis (see definitions section and Figure 1.6B (view preservation), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter);
- (2) The orientation of the tower may deviate from its designated mauka-makai axis by a maximum of twenty degrees. The authority may consider, pursuant to section 15-217-82 of this rule, a deviation of the tower orientation of more than twenty degrees from the designated mauka-makai axis provided that the applicant demonstrates to the satisfaction of the authority that based on building massing, tower floor plate size, tower configuration, tower orientation, energy efficiencies, and other pertinent factors that the proposed tower orientation

will not have a greater impact on mauka-makai view than would result from a twenty degree mauka-makai orientation;

~~[(3) The tower floor plate shall not exceed a horizontal plan projection dimension of one hundred and fifty feet on one direction and a maximum length of two hundred and ten feet between two farthest points of the tower floor plate. The plan projection dimension measured perpendicular to the horizontal projection may exceed one hundred and fifty feet provided that the maximum dimension between two farthest points on the tower foot print do not exceed two hundred and ten feet in length;]~~

~~[(4)]~~ (3) To the extent practicable, [A] a proposed tower shall be located a minimum of three hundred feet from an existing tower, when any portion of the proposed tower falls within the existing tower's mauka-makai zone (see definitions section and Figure 1.6B (view preservation), dated ~~[September 2011]~~, [REDACTED], made a part of this chapter, and attached at the end of this chapter);

~~[(5)]~~ (4) No tower shall be less than eighty feet from another tower; and

~~[(6)]~~ (5) The areas of buildings above seventy-five feet on view corridor streets shall be setback by fifty feet behind the lot line.

~~[(m)]~~ (1) Storefronts and windows for retail:

- (1) Applicability. This subsection applies to existing or newly proposed principal buildings used or intended to accommodate the retail land use classification;
- (2) Stores that occupy greater than sixty feet of frontage shall incorporate multiple entrances along the street;
- (3) Street front elements shall have a depth of at least twenty~~[to eighty]~~ feet of usable commercial or active public use space;
- (4) At least seventy per cent of a retail thoroughfare front element shall be

transparent glazing, with at least seventy per cent of the glazing to allow views into the store rather than being shallow window box displays;

- (5) No more than thirty per cent of the window area at facades may be obstructed by signage or interior displays;
- (6) All principal entrances shall be located along the thoroughfare or a thoroughfare-facing courtyard, rather than from a parking area, alley, or another point within the interior of a block;
- (7) Display windows shall be used on the ground floor and on upper floors of retail space; and
- (8) Buildings facades and side elevations shall accommodate signage for ground floor retail tenants. [Eff \_\_\_\_\_] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-56 Landscape and recreation space.** (a)

All yards shall be landscaped with native or adapted plant species and/or hardscaped [~~with permeable material~~]. No front yard shall have less than fifty per cent of the surface area permeable.

(b) Historic landscapes and exceptional trees as designated by the city and county of Honolulu shall be protected and preserved. In the case where historic landscapes and exceptional trees conflict with prescribed standards in the rules, the historic landscape or exceptional tree takes precedence.

(c) Landscaping shall have an automatic irrigation system with a rain or moisture sensor.

(d) Residential projects requiring a development permit shall provide fifty-five square feet of recreation space per dwelling unit. The required on-site recreation space, if it meets the definition of open space, may be used to satisfy a portion of the open space requirement. [Eff \_\_\_\_\_] (Auth: \_\_\_\_\_)

HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

(e) Landscaping should promote traditional cultural and gathering practices wherever possible.

**§15-217-57 Adequate infrastructure.** (a) This section intends to limit development within portions of the mauka area with known infrastructure deficiencies until such time as the availability of infrastructure is sufficient to accommodate the maximum level of development provided for by the mauka area rules.

(b) This section shall be applicable to the central Kakaako neighborhood zone only.

(c) A maximum FAR of 1.5 shall apply until the executive director determines the infrastructure within the central Kakaako neighborhood zone has been sufficiently upgraded pursuant to an improvement district or other public facilities project. After sufficient infrastructure improvements are made, the FAR shall be increased to ~~[3.5]~~ the maximum allowedable, consistent with the mauka area rules.

(d) Where the executive director finds that the public infrastructure is adequate to support a project within the central Kakaako neighborhood zone or where a project would construct improvements to said infrastructure sufficient to accommodate the subject project and future developments, the executive director may elect to waive the FAR limitations of this section. [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-58 Large lots.** (a) Purpose. This section establishes the standards for developing large lots, dividing them into smaller pedestrian-oriented blocks, and achieving an interconnected block network with walkable block lengths. The standards for large lot projects ensure that these projects promote walkability, pedestrian-orientation, and



sustainability of urban and built form. Buildings should include massing and articulation that reflects a human scale, rather than large, monolithic, and repetitive building fabric.

(b) Applicability. Each building within a large lot project shall comply with the applicable requirements in the development standards by zone and all other relevant standards in the rules. The following standards shall apply to large lot projects (i.e., larger than 140,000 square feet).

(c) Thoroughfare network:

- (1) Large lots shall be divided to create pedestrian-oriented blocks;
- (2) New thoroughfares shall connect with existing thoroughfares;
- (3) New passageways that are introduced shall be a minimum of fifteen feet wide between building elevations;
- (4) New passageways that are introduced shall be un-gated and shall be publically-accessible;
- (5) Architectural encroachments into passageways are allowed two feet from the building face, subject to Figure 1.13-C (encroachments), dated [September 2011,] REDACTED, made a part of this chapter, and attached at the end of this chapter;
- (6) Each new block shall have an alley for service and parking access; and
- (7) Cul-de-sacs and dead-end streets are not permitted, unless they allow for future connections.

(d) New buildings:

- (1) New buildings are permitted as indicated by the building types allocated to each zone;
- (2) New buildings shall have their [~~principle~~] principal entrance off of a new or existing thoroughfare or passageway;
- (3) New buildings with civic or institutional uses shall be located in central locations, and be recognizable and accessible to the public;
- (4) Buildings that occupy a large lot shall

incorporate mid-block pedestrian passageways and courtyards at least every three hundred feet. Where passageways are utilized, they shall connect through the block, across existing alleys if necessary, to other passageways, to mid-block crossings, or thoroughfares for greater street grid connectivity;

- (5) When a building includes a courtyard, the courtyard shall have a minimum dimension of forty feet deep and thirty-five feet wide along the street side;
- (6) The required mid-block pedestrian passageway or courtyard shall not abut an alley; and
- (7) For large lots that abut other parcels not subject to a permit application, an alley of at least twenty-six feet in width must be provided at the edge of the lot that is adjacent to the other parcels to ensure access by vehicles and access to light and air of the other parcels. An alternative proposal may be considered as long as it meets the intent of providing light, room, and air to neighboring parcels.

[Eff \_\_\_\_\_] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-59 Green building.** (a) Purpose. This section provides standards intended to result in a responsible development pattern that conserves natural resources and provides a healthy environment for inhabitants of the mauka area.

(b) Applicability. This section applies to all new buildings and additions and renovations of existing buildings that increase the existing floor area by twenty-five per cent or more, except that Figures BT.1 to [BT.4,] BT.2, dated [September 2011,] \_\_\_\_\_, made a part of this chapter, and attached at the end of this chapter, are not required to follow this standard.

- (c) Green building standards:
    - (1) A project shall qualify for the applicable base LEED rating system at the appropriate certification level (e.g., new construction projects shall qualify for LEED for new construction);
    - (2) The applicable base rating system shall be chosen by the applicant based on the construction type, size, and use of the proposed project;
    - (3) The project shall document the achievement of at least one LEED point in either sustainable sites, stormwater design, quantity control; or stormwater design, quality control;
    - (4) The project shall document the achievement of at least one LEED point in either sustainable sites, heat island effect, non-roof, or roof;
    - (5) The project must document the achievement of at least one point in water efficiency, (WE) credit I: water efficient landscaping;
    - (6) The applicant shall submit documentation and sustainability calculations showing that the proposed development meets the applicable base LEED rating system at the appropriate certification level. Based on these materials, the authority shall determine compliance with this section in conjunction with the accompanying development approval;
    - (7) If the U.S. Green Building Council changes the LEED rating system, the executive director shall identify the new points and rating systems that are relevant to this section; and
    - (8) Applicant may use a green building evaluation system, other than the LEED rating system, as appropriate and as approved by the executive director.
- [Eff                      ] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-33) (Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

**§15-217-60 Encroaching elements.** Architectural features may encroach beyond a required build to line, as designated in Figure 1.13-C (encroachments), dated ~~[September 2011]~~, made a part of this chapter, and attached at the end of this chapter. [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-61 Flood zone.** (a) Purpose. These standards provide building and urban design strategies that supplement the regulations presented in ~~[article 9-e]~~ the city and county of Honolulu land use ordinance, which do and shall apply in the mauka area. These standards help assure that flood measures implemented are seamless with existing fabric in terms of scale, frontage, and fenestration. The standards help ensure that measures implemented do not impede pedestrian access from abutting thoroughfares.

(b) Applicability. The following standards apply to all new buildings within an identified Honolulu or FEMA flood zone that are required by code to have raised ground floors.

- (1) Design and location standards for ADA compliant wheelchair access ramps within flood zones:
  - (A) A wheelchair ramp may only occupy up to fifteen per cent of building face;
  - (B) Wheelchair ramps and ramp handrails on all ramps greater than twenty feet in length must be placed behind street walls or landscaping features such as hedges;
  - (C) Except for those used for residential purposes, all buildings occupying less than one hundred twenty feet of frontage, shall use internal wheelchair ramps (see Figure 1.16-A (flood zone design, internal wheelchair ramp), dated ~~[September 2011]~~,

- made a part of this chapter, and attached at the end of this chapter);
- (D) Except for those used for residential purposes, all buildings occupying more than or equal to one hundred twenty feet of frontage may use external wheelchair ramps (see Figures 1.16-B and 1.16-C (flood zone design), dated ~~[September 2011,~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter); and
  - (E) For all buildings, except for those used for residential use, no wheelchair ramps are allowed in the public right-of-way or front setback, except in the following circumstances:
    - (i) When the ramp fronts the side of a building near a corner;
    - (ii) When the ramp is shielded from the thoroughfare or covered under an element such as an arcade (see Figure 1.16-D, dated ~~[September 2011,~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter); or
    - (iii) If the length of the ramp within the public right-of-way or front setback is less than or equal to twenty-five per cent of the width of the sidewalk. In this case, handrails are not permitted in the public right-of-way or front setback; and
  - (F) For residential buildings, wheelchair ramps may not be located in the public right-of-way or in the front setback; and
- (2) Other design standards for flood zones:
- (A) Measures undertaken to avoid floods shall not result in large cs along the

- building [~~face.~~] frontage. At least seventy-five per cent of a building's frontage shall be activated with shop front windows, seating areas, steps, landscaping, or street furniture; and
- (B) There shall be breaks in any flood control intervention such as raised sidewalks every thirty feet, stairways, entrances, gardens, [and] planting features[-], and other elements approved by the executive director.
- [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-62 Historical and cultural sites. (a)**

Purpose. The purpose of this section is to preserve, protect, reconstruct, rehabilitate and restore properties in the mauka area that are determined to be historic and culturally significant, whether physical remains of the property are present or not.

(b) Applicability. This section applies to all historical or culturally significant properties.

(c) Preservation and consultation. Properties situated in the mauka area that are deemed to be historically or culturally significant shall be preserved, protected, reconstructed, rehabilitated and restored by the landowners in accordance with the implementing regulations of section 106 of the National Historic Preservation Act, as applicable, and chapter 6E, HRS:

- (1) Developers of new projects or projects with significant alterations on historic or culturally significant properties shall consult with the department of land and natural resources, state historic preservation division ("SHPD"), [~~department of land and natural resources~~] to allow an opportunity for review of the effect of the proposed project on any historic properties or burial sites, pursuant to section 6E-43,

HRS;

- (2) A written letter of concurrence from SHPD or adequate documentation that the applicant has complied with the requirements of chapter 6E-10, HRS, shall be included with the permit application to the authority; and
- (3) All SHPD requirements shall be completed by the developer prior to submittal of a permit application to the authority, unless otherwise permitted by SHPD and approved by the executive director.

(d) Uses classifications. A property designated historic or culturally significant may be put to any use permitted in the neighborhood zone in which the property is situated, subject to the requirements of this section. [Eff \_\_\_\_\_] (Auth: HRS §§206E-7, 206E-33) (Imp: HRS §§206E-7, 206E-33)

**§15-217-63 Parking and loading. (a)**

Applicability. This section applies to all new principal buildings in the mauka area or additions to buildings on properties that exceed twenty-five per cent of the existing floor area on said property.

- (b) Access:
  - (1) Parking shall be accessed from an alley;
  - (2) When there is no alley present, parking shall be accessed from a parking access street as indicated in Figure [1-10] 1.10-B (parking placement diagram), dated [September 2011, \_\_\_\_\_], made a part of this chapter, and attached at the end of this chapter;
  - (3) When access from a parking access street is not possible, parking shall be accessed from an alternative parking access street as indicated in Figure [1-10] 1.10-B (parking placement diagram), dated [September 2011, \_\_\_\_\_], made a part of this chapter, and attached at the end of this chapter;
  - (4) When access from an alternative parking access street is not possible, an

- alternative parking plan may be submitted;  
and
- (5) Driveway access for parking shall be a minimum of fifty-five feet from an intersection measured from the right-of-way.
- (c) Curb cuts:
- (1) The number of curb cuts shall be minimized, especially along alternative parking access streets, to the maximum practicable extent. Shared alleys, access drives and parking arrangements are encouraged to reduce the need for new curb cuts;
  - (2) Maximum width of new curb cuts shall be twenty-five feet for a two-way driveway and twelve feet for a one-way driveway, except that driveways for front yard houses and all other detached dwellings shall be no more than ten feet in width; and
  - (3) Curb cuts shall be setback a minimum of twenty-two feet from adjacent properties. Lots with less than one hundred linear feet of frontage are exempt from this provision.
- (d) Placement:
- (1) Parking shall be a minimum of forty feet behind any lot line, unless indicated otherwise in Figure 1.10 (parking), dated ~~September 2011,~~ [REDACTED], made a part of this chapter, and attached at the end of this chapter;
  - (2) Parking lots and structures shall not front a civic space~~[+]~~ or thoroughfare without a liner building; and
  - (3) Parking is prohibited within any building front setback or front yard, except in the CK neighborhood zone.
- (e) Quantity:
- (1) Required number of off-street parking spaces is as follows:

#### Off-Street Parking



Uses	Requirements
Detached dwellings, live-work, and duplexes:	two per unit plus one per one thousand square feet of floor area over 2,500 square feet;
Multi-family dwelling six hundred square feet or less:	<del>[0.9 per unit;]</del> <u>not required;</u>
Multi-family dwelling greater than six hundred square feet:	<del>[1.25 per unit;]</del> <u>not required;</u>
Group homes, care, convalescent and nursing home:	<del>[0.9]</del> <u>2 plus 1 per [four] one hundred patient beds, dwelling units, or lodging units[+], and 50% of spaces shall be ADA compliant;</u>
Commercial, clinics, administrative and all other uses:	<del>[One per four hundred fifty square feet of floor area;]</del> <u>not required;</u>
Restaurants and bars, and dance-nightclubs:	<del>[0.9 per three hundred square feet of eating or drinking area, plus 0.9 per twenty-five square feet of dance floor area, plus one per four hundred fifty square feet of kitchen or accessory area;]</del> <u>not required;</u>

Group assembly:	<del>[0.9 per three hundred square feet of assembly area or 0.9 per ten fixed seats, whichever is greater,]</del> <u>not required;</u>
Religious facilities and theaters:	<del>[0.9 per every five fixed seats or fifty square feet of general assembly area, whichever is greater,]</del> <u>not required;</u>
Day-care facilities:	<del>[0.9 per ten enrolled capacity,]</del> <u>not required;</u>
Educational facilities that are at the elementary and intermediate level:	<del>[0.9 for each twenty students of design capacity, plus one per four hundred fifty square feet of office floor area,]</del> <u>not required;</u>
Educational facilities that are at the high school level, language, vocational, business, technical, trade, college, or universities:	<del>[0.9 for each ten students of design capacity, plus one per four hundred fifty square feet of office floor area,]</del> <u>not required;</u>
Industrial, media production, printing and publishing and warehousing:	<del>[one per nine hundred square feet of floor area,]</del> <u>not required;</u>
<u>Hotel, lodging:</u>	<u>0.25 per room.</u>

- (2) There shall be no off-street parking requirement for the central Kakaako neighborhood zone;

- (3) When there is uncertainty as to requirements for a proposed use, the executive director will review the proposed use and determine its equivalent and applicable off-street parking requirements;
- (4) When computation of required parking spaces results in a fractional number, the number of spaces required shall be rounded to the nearest whole number;
- ~~[(5) Every twenty-four inches of pew or bench area provided in a religious facility or other place of assembly shall be counted as seats for the purpose of determining requirement for off-street parking;]~~
- ~~[(6)]~~ (5) ~~[At least fifty per cent of required]~~ All parking spaces shall be standard sized parking spaces; and
- ~~[(7)]~~ (6) When a building includes uses incidental or accessory to a principal use, the executive director shall determine the total number of required spaces on the basis of the parking requirements for the use that creates a larger parking demand.
- (f) Shared parking:
  - (1) Because of the mixed-use nature of the mauka area and the differing peaks associated with different uses, the same parking facility may be utilized by a variety of users throughout the day. This can reduce the total number of parking spaces needed to serve the peak parking demand of the mauka area. The executive director may authorize shared parking based upon a finding that adequate parking or loading spaces will be provided;
  - (2) Required parking may be adjusted downward, without the need for a variance, according to the shared parking factor of Figure 1.10-A (parking), dated ~~[September 2011]~~, made a part of this chapter, and attached at the end of this chapter; and
  - (3) Parking required by the rules for an

individual project shall be located within 1,200 feet of the project site, within the mauka area, or outside the boundary by covenant, lease, license or other arrangement to the satisfaction of the executive director.

(g) On street. Marked on-street parking shall not count towards required parking ~~[when the on-street parking is adjacent to the parcel or within two hundred feet of the parcel].~~

(h) Aisle and space dimensions:

- (1) All parking spaces shall be standard size. Each standard parking space shall be no less than 8.5 feet wide and eighteen feet long;  
~~[(2) Each compact parking space shall be no less than 7.5 feet wide and sixteen feet long and shall be marked as a compact space; and]~~

~~[(3)]~~ (2) Ingress and egress aisles shall be provided to a thoroughfare and between parking bays. Minimum aisle widths for parking bays shall be:

- (A) Parking at 0 - 44 degrees: 12 feet;
  - (B) Parking at 45 - 59 degrees: 13.5 feet;
  - (C) Parking at 60 - 69 degrees: 18.5 feet;
  - (D) Parking at 70 - 79 degrees: 19.5 feet;
  - (E) Parking at 80 - 89 degrees: 21 feet;
- and
- (F) Parking at 90 degrees: 22 feet;

Notwithstanding the foregoing, for a parking angle of ninety degrees, the minimum aisle width may be reduced by one foot for every six inches of additional parking space width above the minimum width, to a minimum aisle width of nineteen feet.

(i) Design:

~~[(1) Tandem parking and hydraulic lifts are permitted in parking facilities used for residential purposes, when both spaces are utilized by a single dwelling;]~~

~~[(2)]~~ (1) Tandem parking, robotic parking systems, and hydraulic lifts are permitted in any [attended] parking facility;

- ~~[(3)]~~ (2) Storage is permitted above all parking spaces constructed in parking garages or in parking structures;
- ~~[(4)]~~ ~~Robotic parking is permitted;~~
- ~~[(5)]~~ (3) Any mechanical equipment for providing parking shall be visually screened from view at abutting thoroughfares by architectural or landscape treatments;
- ~~[(6)]~~ (4) High albedo concrete shall be used instead of asphalt in surface parking lots; and
- ~~[(7)]~~ (5) All sources of illumination shall be shielded to prevent any direct reflection toward adjacent premises.
- (j) Landscaping for surface lots:
  - (1) Parking lot landscape requirements are one tree per twenty spaces with a minimum of one landscaped island for every ten spaces;
  - (2) Every other row of parking shall include a landscaped median for the entire length of a bay. The entire length shall be planted with large shade trees at least every forty-five feet. Where a tree planting island occurs the entire length of a bay, there shall be a minimum of one planting island every fifteen spaces and a minimum of one large shade tree every fifteen spaces in a tree planting island; and
  - (3) Permeable surfaces for parking and maneuvering areas are ~~[permitted]~~ preferred.
- (k) Structures. Priority placement near entries, doors, elevators, or stairs within parking structures shall be given to parking for bicycles, car-shares, and plug-in electric vehicles.
  - (1) Costs. The total costs of developing, constructing, and maintaining an off-street parking stall shall be disclosed to any buyer or renter of a residential or commercial unit at the time of sale or signing of a rental agreement.
- ~~[(1)]~~ (m) Loading:
  - (1) The following loading space requirements shall apply:

# Loading Space Requirements

<u>Uses</u>	<u>Loading Requirements</u>	<u>Floor Area (in square feet) or number of units</u>
Goods and services and industrial:	one	<del>[25,000]</del> <u>5,000</u> - 10,000
	two	10,001 - 20,000
	three	20,001 - 40,000
	four	40,001 - 60,000
	one	Each additional 50,000 over 60,000
Civil support, educational, and civic:	one	5,000 - 10,000
	two	10,001 - 50,000
	three	50,001 - 100,000
	one	Each additional 100,000 over 100,000
Office:	one	20,000 - 50,000
	two	50,001 - 100,000
	one	Each additional 100,000 over 100,000
Multiple-family dwellings:	one	<del>[20,000 - 150,000]</del> <u>100 units</u>
	<del>[two]</del> <u>one</u>	<del>150,001 - 300,000</del> <u>Each additional 250 units</u>
	<del>[one]</del>	<del>Each additional 200,000 over 300,000]</del>

- (2) Loading space requirements shall be provided within a building, lot, or alley. Loading spaces are prohibited in thoroughfares;
- (3) Access to a loading space shall not be from a promenade street;
- (4) When only one loading space is required and total floor area is less than 5,000 square feet, the minimum horizontal dimensions of the space shall be 19 x 8-1/2 feet, and the

- space shall have a vertical clearance of at least ten feet;
- (5) When more than one loading space is required, the minimum horizontal dimensions of at least half of the required spaces shall be 12 x 35 feet and have a vertical clearance of at least fourteen feet. The balance of the required spaces shall have horizontal dimensions of at least 19 x 8-1/2 feet and vertical clearance of at least ten feet;
  - (6) Each loading space shall be unobstructed and shall be arranged so that any vehicle may be moved without moving the other;
  - (7) Adequate maneuvering areas and access to a street shall be provided and shall have a vertical clearance not less than the applicable height for the loading space;
  - (8) All loading spaces and maneuvering areas shall be paved with an all-weather surface;
  - (9) Where loading areas are illuminated, all sources of illumination shall be shielded to prevent any direct reflection toward adjacent premises;
  - (10) Loading spaces for three or more vehicles shall be arranged so that no maneuvering to enter or leave a loading space shall be on any public street, alley or walkway;
  - (11) Each required loading space shall be identified as such and shall be reserved for loading purposes;
  - (12) No loading space shall occupy required off-street parking spaces or restrict access; and
  - (13) An adjustment of up to fifty per cent of the required number of loading spaces may be allowed when such spaces are assigned to serve two or more uses of a single project jointly, provided that:
    - (A) Each use has access to the loading zone without crossing any street or public sidewalk; and

- (B) The amount of loading spaces which may be credited against the requirements for the use or uses involved shall not exceed the number of spaces reasonably expected to be available during differing periods of peak demand.
- (14) There shall be no off-street loading requirements for the central Kakaako neighborhood zone.
- ~~[(m)]~~ (n) Bicycle parking:
- (1) Both short-term bicycle parking and long-term bicycle parking shall be provided;
- (2) Bicycle parking shall be provided within four hundred feet of the principal entrance of the building;
- (3) Instructional signs shall be used to explain how to use the bicycle parking device and directional signage shall be installed when bicycle parking locations are not readily visible from entrances; and
- (4) ~~[For use classifications not specifically mentioned, requirements will be determined by the executive director based on the most similar use listed, except that Figures BT.1 to BT.3, dated September 2011, made a part of this chapter, and attached at the end of this chapter, are exempt from bicycle parking requirements.]~~ On-site bicycle storage shall meet the bicycle parking requirements of the city and county of Honolulu land use ordinance.
- [Eff \_\_\_\_\_] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-217-64 Conditional use of vacant land. (a)

The executive director may issue a conditional use of vacant land permit, provided that the following standards are met:

- (1) The proposed use is permitted within the applicable zone except:



- (A) Open or uncovered parking at grade may be permitted in all zones, whether paved or unpaved; and
- (B) Construction sites, special trade construction, and non-extensive yard uses may be permitted in all zones where a six-foot screening wall, hedge, or fence is erected along all street rights of way;
- (2) The maximum duration of the use is for a two-year period, provided that the executive director may issue extensions of up to two additional years if the development status of the area has not changed appreciably since the use was initially permitted;
- (3) The floor area ratio of any proposed temporary structure shall not exceed 0.5 and the project shall conform to the built form and landscaping standards of the rules; and
- (4) The proposed use shall in no way prevent or delay the future development or improvements to the property.
- (b) In addition to these standards, the executive director may include additional requirements in the permit to ensure that the conditional use does not adversely affect adjacent property and the appearance of the mauka area. [Eff ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-65 Public facilities dedication fee.**

(a) Applicability. This section shall apply to any new development or improvement project, or existing development or improvement project within the mauka area that increases the existing floor area by more than twenty-five per cent as compared to the floor area existing on February 27, 1982 or at the time the development permit or improvement permit was issued, excluding proposed demolitions, whichever is less; provided, however, that this section shall not apply to any development or improvement project undertaken

by an eleemosynary organization, development or improvement project for public uses, public project, workforce housing projects, floor area related to reserved housing, additional floor area gained through incentive zoning, single-family dwellings and duplex units, or new buildings or structures with a floor area of less than 200 square feet.

(b) Dedication requirement. As a condition precedent to the issuance of an improvement permit or development permit, the developer shall dedicate land for public facilities. The dedication of land for public facilities shall be subject to the maximum ceiling in land or money in lieu thereof calculated in accordance with the formula designated in subsections (d) to (f) herein.

(c) In-lieu fee payments. As an alternative to the land dedication requirement of section 15-217-65(b), an in-lieu fee payment may be authorized as follows:

- (1) For improvement permit applications, the executive director may authorize a developer to pay an in-lieu fee equal to the value of land which would otherwise have had to be dedicated, or combine the payment of fee with land to be dedicated. The total value of such combination shall be not less than the value of land which would otherwise have had to be dedicated; and
- (2) For development permit applications, the authority may authorize a developer to pay a fee equal to the value of land which would otherwise have had to be dedicated, or combine the payment of fee with land to be dedicated. The total value of such combination shall be not less than the value of land which would otherwise have had to be dedicated.

(d) Minimum dedication requirements. Land dedication requirements are:

- (1) Three per cent of the total commercial floor area;
- (2) Four per cent of the total residential floor

- area exclusive of floor area devoted to reserved housing units and their associated common areas in proportion with the floor area of other uses; and
- (3) If the area of land approved for dedication is less than the land area required under subsection (d)(1) and (2) above, the developer shall be required to pay a fee equal to the fair market value of the land area which is the difference between the land area dedicated and the land area required under subsection (d)(1) and (2) above.
  - (e) Payment timing and use of funds:
    - (1) Authorized in-lieu fees shall be payable prior to the issuance of the initial certificate of occupancy and secured by the applicant with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other acceptable means prior to the issuance of the initial building permit; and
    - (2) Payment of fees shall be made to the authority for deposit in the authority's revolving fund established under section 206E-16, HRS.
  - (f) Valuation methodology. Valuation of land when fees are to be paid shall be determined as follows:
    - (1) Valuation shall be based upon the fair market value of the land as though vacant and unimproved on the date the developer's application for an improvement permit or development permit is deemed complete pursuant to section 15-217-85 (completeness review), as agreed to by the developer and the executive director if an improvement permit or the developer and authority if a development permit; and
    - (2) In the event that a fair market value cannot be agreed on, the fair market value of the

land as though vacant and unimproved shall be fixed and established by majority vote of three real estate appraisers whose decision shall be final, conclusive, and binding; one shall be appointed by the developer, one appointed by the executive director in the case of improvement permits or the authority in the case of development permits, and the third appointed by the first two appraisers. In the event a party shall fail to appoint an appraiser within ten days following the appointment of the first appraiser, the party who appointed the first appraiser may apply to the person sitting as the administrative judge of the circuit court of the first circuit of Hawaii, if any, or if none, to any judge in service of said court, for the appointment of the second appraiser; provided, however, that if the developer is the party who has failed to appoint an appraiser within ten days following the executive director's or authority's appointment of the first appraiser, the executive director or authority, as the case may be, may deny the developer's request to pay a monetary fee in lieu of dedicating land. The two appraisers shall appoint a third appraiser, and in case of their failure to do so within ten days after appointment of the second appraiser, either party may apply to the person sitting as the administrative judge of the circuit court of the first circuit of Hawaii, if any, or if none, to any judge in service of said court, for the appointment of the third appraiser. The appraisers shall determine the fair market value of the land as though vacant and unimproved on the date the developer's application for an improvement permit or development permit is deemed complete pursuant to section 15-217-85 (completeness review). All appraisers shall have had a

minimum of five years of training and experience in real estate appraisal work in the state of Hawaii. The appraisers shall be governed in their determination by the provisions of chapter 658A, HRS. The fees and costs of each appraiser and all other appraisal costs shall, with exception of each party's attorneys' fees and costs and witnesses' fees, shall be borne equally by both parties.

(g) Dedication instrument. For land dedication pursuant to this section, the developer shall record the necessary conveyance instrument, free and clear of all encumbrances, in the bureau of conveyances, state of Hawaii, and shall file copies of the recorded conveyance instrument with the authority. The authority may require the developer to maintain the dedicated area until such time that notice is given by the authority to accept ownership and control of the area.

(h) Relationship to existing or future improvement districts. Nothing contained in this section shall preclude the creation of any improvement district for public facilities, or the imposition of assessments against properties specially benefited within the district. [Eff \_\_\_\_\_] (Auth: HRS §§206E-7, 206E-12) (Imp: HRS §§206E-7, 206E-12)

§§15-217-66 to [~~15-217-78~~] 15-217-75 (Reserved).

## SUBCHAPTER 5

### PROCEDURES

#### **§15-217-76 Zoning clearance.**

(a) Applicability. Any uses and activities identified may be issued a zoning clearance when they

are in compliance with the applicable standards of subchapter 2 (regulating plan and neighborhood zones), including 15-217-23 and -26, and, where applicable, those relating to section 15-217-91 (nonconformities);

(b) Initiation. A developer may apply for a zoning clearance by filing an application with the executive director.

(c) Action. In accordance with Figure 1.1 (approval requirements matrix), dated [REDACTED], made a part of this chapter, and attached at the end of this chapter, the executive director may approve all zoning clearance applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7) (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-77 Temporary use permit.**

(a) Applicability. Structures, such as tents and booths, may be permitted by the executive director for periods not exceeding fourteen days within a ninety day period, provided that for good reasons, the executive director may grant extensions.

(b) Initiation. An applicant may apply for an temporary use permit by filing an application with the executive director.

(c) Action. In accordance with Figure 1.1 (approval requirements matrix), dated September 2022, made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all temporary use permit applications consistent with this section after receipt of a complete application and payment of the requisite fee. In approving a temporary use permit, the executive director may impose reasonable standards, conditions, or requirements as a condition to the approval. [Eff ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**~~[§15-217-79]~~ §15-217-78 Rules clearance.**

(a) Applicability. Any uses, structures, and activities identified by section ~~[15-217-79(b)]~~ 15-217-78(b) below ~~[on a lot size of 20,000 square feet or less]~~ shall be issued a rules clearance when they are in compliance with the setback requirements, height limits, and all other applicable standards of subchapter 2 (regulating plan and neighborhood zones), subchapter 3 (thoroughfare plan and standards), subchapter 4 (area-wide standards) and, where applicable, those relating to section 15-217-91 (nonconformities);

(b) Qualifying land uses, structures and activities. The following are eligible for issuance of a rules clearance when in compliance with section ~~[15-217-79(a)]~~ 15-217-78(a) above:

- (1) Decks, paths and driveways. Decks, platforms, on-site paths, and driveways that are not required to have a building permit or grading permit;
- (2) Fences and walls in compliance with height and location requirements in section 15-217-55(e) (architectural design);
- (3) ~~[Changes in use,]~~ Interior alterations or change in use. Interior alterations or change in use that do not increase the gross floor area of the structure;
- (4) Repairs and maintenance:
  - (A) Single-family dwellings. Ordinary nonstructural repairs to, and maintenance of, single-family dwellings; or
  - (B) Multi-family residential and non-residential structures. Ordinary non-structural repairs to, and maintenance of multi-family residential and non-residential structures, if:
    - (i) The work does not change the approved land use of the site or structure, or add to, enlarge or expand the land use and/or structure; and

- (ii) Any exterior repairs employing the same materials and design as the original construction;
- (5) Small, portable residential accessory structures. A single portable structure of one hundred twenty square feet or less per lot or unit, including pre-manufactured storage sheds and other small structures that are exempt from having to obtain a building permit from the city and county of Honolulu and in compliance with the applicable building code. Additional structures may be approved in compliance with subchapter 4 (area-wide standards), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter, where allowed by the applicable zone;
- (6) Spas, hot tubs, and fish ponds. Portable spas, hot tubs, and constructed fish ponds, and similar equipment and structures that do not: exceed one hundred twenty square feet in total area including related equipment; contain more than 2,000 gallons of water; or exceed two feet in depth;
- (7) Open space and parks. Any improvement project over, upon, under or across any open space or park pursuant to Figure 1.11 (civic space), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter;
- (8) Private utility improvements or repairs for existing structures; and
- ~~[-(8)]~~ (9) Any public utility project.
- (c) Action. In accordance with Figure 1.1 (approval requirements matrix), dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all rules clearance applications consistent with this section after receipt of a complete application and payment of the requisite fee.



(d) Exceptions. Rules clearances shall not be required for the following:

- (1) Interior electrical or plumbing work that is not required to obtain a building permit and would otherwise comply with section 15-217-78(a); and
- (2) Changes in use that are still permitted under section 15-217-26. [Eff \_\_\_\_\_]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-79 Renovation permit.**

(a) Applicability. Any Renovation Project for an existing building shall require a permit unless waived in accordance with section 15-217-90 (minor changes) or eligible for a temporary use permit under section 15-217-77, rules clearance under section 15-217-78, or a conditional use permit under section 15-217-81. Renovation projects shall be in compliance with section 15-217-93, Nonconformities.

(b) Initiation. A developer may apply for a renovation permit by filing an application with the executive director.

(c) Action. In accordance with Figure 1.1 (approval requirements matrix), dated September 2022, made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all renovation permit applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff \_\_\_\_\_]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-80 Improvement and development permits.**

(a) Applicability. All new improvement projects and developments shall require a permit unless waived in accordance with section 15-217-90 (minor changes) or eligible for a rules clearance under section ~~[15-217-79.]~~ 15-217-78, renovation permit under section 15-217-79, or a temporary use permit under section 15-217-77.

(b) Initiation. A developer may apply for an improvement permit or development permit by filing an application with the executive director.

(c) Types. There shall be two types of permits—improvement and development. Each type shall be subject to the decision-maker review and action pursuant to Figure 1.1 (approval requirements matrix), dated ~~[September 2011,]~~ \_\_\_\_\_, made a part of this chapter, and attached at the end of this chapter:

- (1) Improvement permits shall apply to improvement projects and are subject to executive director review and action; and
- (2) Development permits shall apply to developments and are subject to authority review and action.

(d) Required findings. Approval of an improvement or development permit shall require all the following findings of fact:

- (1) Mauka area plan consistency. That the proposal complies with and advances the goals, policies and objectives of the mauka area plan;
- (2) Mauka area rules consistency. That the proposal will protect, preserve, or enhance desirable neighborhood characteristics through compliance with the standards and guidelines of the mauka area rules; and
- (3) Compatibility. That the proposal will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.

(e) Conditions. In approving an improvement or development permit, the decision-maker may impose any

reasonable conditions to ensure that the approval complies with the findings required above. Any conditions attached to an improvement or development permit issued by the executive director or authority, as the case may be, under any previously enacted zoning regulations, subdivision, or other administrative rules shall continue to apply to the proposed use and shall be enforceable as provided in section 15-217-92 (violations and enforcement). Such conditions may be waived if an improvement or development permit application is approved by the decision-maker which originally imposed such condition(s) and where the applicant agrees to waive and abandon all rights secured under the regulations formerly in effect.

(f) Design advisory board ("DAB"). The executive director may convene a DAB prior to acting on an improvement permit application. Where an application has been referred to the authority for review and action under section 15-217-80(g) or when reviewing a development permit application, the authority may convene a DAB whether or not the executive director has done so previously:

- (1) Composition. The DAB shall be comprised of the HCDA's director of planning and development or his/her designee, one member of the authority, one native Hawaiian cultural consultant, and one or more technical consultants (e.g., architect, landscape architect, engineer) chosen by the executive director. The native Hawaiian cultural consultant must be validated or be recommended by a native Hawaiian serving organization;
- (2) Fee. The applicant shall compensate the authority for all costs relating to the participation of technical consultants in the DAB. Prior to retaining technical consultants, the executive director shall consult with the applicant on their fees and work scope; provided, however, that the executive director may accept or reject the

applicant's recommendations and/or comments on the technical consultant to be retained at the executive director's sole discretion; and

- (3) Purpose. The DAB shall provide only non-binding recommendations to the executive director or, in the case of referral under section 15-217-80(g), to the authority.

(g) Authority referral. The executive director may refer an improvement permit application to the authority for review and action. Where a DAB has been or will be convened, the DAB shall review the application and provide its non-binding recommendations to the authority. [Eff ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-81 Conditional use permit.** (a) Purpose. This section provides for certain uses that, because of unique characteristics or potential impacts on adjacent land uses, may be authorized only under appropriate standards and factors set forth in the rules. No inherent right exists to receive a conditional use permit. Such authorization must be approved under a specific set of circumstances and conditions. Each application and situation is unique. Every conditional use permit application or amendment shall at a minimum be required to comply with every requirement contained in each subchapter of the rules. Mere compliance with the generally applicable requirements however may not be sufficient, and additional measures and conditions may be necessary to mitigate the impact of the proposed development.

(b) Applicability. All uses identified by "CU" in Figure 1.9 (land use), dated [September 2011,] [redacted], made a part of this chapter, and attached at the end of this chapter, shall require conditional use permit approval.

(c) Decision-maker. Conditional use permits shall be subject to the authority review and action pursuant to Figure 1.1 (approval requirements matrix),

dated [~~September 2011,~~] [REDACTED], made a part of this chapter, and attached at the end of this chapter.

(d) Findings. Approval of a conditional use permit shall require all the following findings of fact:

- (1) The use is allowed within the applicable zone and complies with all other applicable provisions of the rules;
- (2) The use will conform to the mauka area plan;
- (3) The design, location, size and operating characteristics of the proposed use are compatible with the existing and future uses in the vicinity;
- (4) The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
- (5) Granting the permit would not be detrimental to the public health, safety, or welfare, or materially injurious to persons, property, or improvements in the vicinity and Zone in which the property is located.

(e) Conditions. In approving any conditional use permit, the authority may impose such reasonable standards, conditions, or requirements, in addition to or that supersede any standard specified in the rules, as it may deem necessary to protect the public welfare and in order to ensure the approval will comply with the findings of section 15-217-81(d) (conditional use permit). Such additional standards, conditions or requirements may include, but need not be limited to:

- (1) Financing and availability of adequate public facilities or services;
- (2) Dedication of land;
- (3) Reservation of land;
- (4) Payment of exactions;
- (5) Impact fees;
- (6) Creation of special assessment districts;
- (7) Creation of restrictive covenants or easements;
- (8) Special setbacks;
- (9) Yard requirements;

- (10) Increased screening or landscaping requirements;
- (11) Area requirements;
- (12) Development phasing;
- (13) Standards pertaining to traffic, circulation, noise, lighting, hours of operation, protection of environmentally sensitive areas, and similar characteristics;
- (14) Provision of sustainable features, solar or other renewable energy source, rain water capture, storage and treatment or other sustainability requirement in section 15-217-59 (green building); or
- (15) Require that a performance guarantee - acceptable in form, content, and amount to the authority be posted by the applicant to ensure continued compliance with all conditions and requirements as may be specified.

(f) Initiation. A developer may apply for a conditional use permit by filing an application with the executive director.

(g) Action. In accordance with Figure 1.1 (approval requirements matrix), dated September 2022, made a part of this chapter, and attached at the end of this chapter, the executive director shall approve all conditional permit applications consistent with this section after receipt of a complete application and payment of the requisite fee. [Eff  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-82 Variances.** (a) Purpose. This section is intended to provide a mechanism for relief from the strict application of the rules where the strict application will deprive the property owner of privileges enjoyed by similar properties because of the subject property's unique and special conditions. Economic or financial hardship alone is not sufficient justification for granting a variance.

(b) Applicability. All requirements of the rules are mandatory unless approval of variance is obtained, except as limited by section 15-217-82(f) (variances).

(c) Types. There shall be two types of variances - minor and major. Each type shall be subject to the decision-maker review and action of Figure 1.1 (approval requirements matrix), dated [September 2011, REDACTED], made a part of this chapter, and attached at the end of this chapter:

- (1) Minor variances shall apply to projects on parcels 20,000 square feet or less and are subject to executive director review and action; and
- (2) Major variances shall apply to projects on parcels over 20,000 square feet and are subject to authority review and action.

(d) Findings. Approval of a variance shall require all the following findings of fact:

- (1) Uniqueness. That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular lot; and that, as a result of such unique physical conditions, practical difficulties or unusual hardship arise in complying strictly with the standards of the rules;
- (2) Self-created hardship. That the practical difficulties or unusual hardship claimed as the basis for a variance has not been created by the owner or by a predecessor in title;

- (3) Minimal deviation. That the variance, if granted, is the minimum deviation necessary to afford relief; and to this end, the decision-maker may permit a lesser variance than that applied for;
- (4) Neighborhood character. That the variance, if granted, will not alter the existing or planned character of the neighborhood or neighborhood zone in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare; and
- (5) No adverse impact. The variance would result in development that is not detrimental to or that would adversely impact adjacent properties.

(e) Variances for buildings for civic uses. In addition to the findings required by section 15-217-82(d) above, a community identity finding shall also be required to grant approval for a variance involving a new building or substantial modification to an existing building providing for a civic land use classification of Figure 1.9 (land use), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter. The community identity finding establishes that the building and use provides a public service dedicated to arts, culture, education, recreation, government, transit or public parking and is uniquely designed to feature as a prominent, architecturally significant contribution to the built environment such that deviation from the provisions of the rules is warranted.

(f) Limitations. The following shall not be eligible for variance approval:

- (1) Change of zone;
- (2) Deletion of any thoroughfare identified in the thoroughfare plan;
- (3) Figure 1.5 (parks and open space plan), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the



- end of this chapter;
- (4) Figure 1.6 (view corridors), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter, and associated setback requirements;
  - (5) Land use classifications as allocated to neighborhood zones - Figure 1.9 (land use), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;
  - (6) Any buildings types and frontages types not allocated to neighborhood zones; and
  - (7) Any maximum floor area ratio standard.
- (g) Submittal requirements. Each variance application shall include, at a minimum, the following:
- (1) A statement of the standard or standards that are the subject of the proposed variance;
  - (2) A textual description of the manner in which the applicant proposes to deviate from such evaluation standard or standards;
  - (3) Plans drawn to scale, showing the nature, location, dimensions, and elevation of the structure, area or part thereof that is the subject of the proposed variance; including the development projects relationship to the surrounding context;
  - (4) A justification for the proposed variance in light of the requirements set forth above; and
  - (5) Other information as may be required by the decision-maker. [Eff [REDACTED]] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-83 Master plan.** (a) Purpose. The provisions of this section is intended to provide for a flexible approach to development, encourage investment in new development and commitment to the

master planning of large land holdings. A further purpose of this section is to derive public benefits, such as reserved housing, public parking, off-site infrastructure and other public facilities from master plan developers, in exchange for greater development flexibility for a specified period.

(b) Applicability. Developers of project sites over five acres are eligible to apply for a master plan permit.

(c) Contents. A master plan permit may authorize only the following:

- (1) A development approval period up to ten years;
- (2) The provision of reserved housing outside of the mauka area; and
- (3) Public facilities, beyond that required by the mauka area plan or the mauka area rules, including, but not limited to, parks and open space, public infrastructure, and public art.

(d) Findings. The authority shall make the following findings of fact in order to approve a master plan permit:

- (1) That the master plan implements and is consistent with the mauka area plan and mauka area rules; and
- (2) That the master plan will either enhance or provide necessary public facilities, as provided for in section 15-217-83(f) (master plan).

(e) Submittal requirements. Each master plan permit application shall include, at a minimum, the following:

- (1) Plans and supporting information sufficient to clearly indicate the pattern and implications of development within the master plan area;
- (2) Proposed development approval timeframe;
- (3) Proposed number, location, type and size of reserved housing;
- (4) Proposed public facility improvements; and
- (5) Such other information as may be required by

the executive director or authority.

(f) Public facilities. All public facilities above those required by these rules and other administrative rules of the Hawaii community development authority may be voluntarily offered by the master plan applicant.

(g) Time extension. The authority may authorize a master plan approval time extension for up to a five-year time period. A maximum of two time extensions may be authorized. [Eff ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-7, 206E-33)

**§15-217-84 Floor area ratio transfer. (a)**

Purpose. The purpose of this section is to offer a discretionary review process for the transfer of floor area within the mauka area from a sending site to a receiving site. More specifically, the purposes are to encourage the transfer of floor area to properties with lot dimensions that allow for additional floor while complying with the building envelope requirements set forth in Figures BT.1 to BT.10, dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter, and building height requirements set forth in Figures NZ.1 to NZ.7, dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter.

(b) Generally. The proposed creation and redemption of floor area ratio transfers will take place solely on a voluntary basis between consenting parties. Landowners are not required to create or convey floor area ratio transfers. However, floor area ratio transfers must be created, conveyed, or redeemed in accordance with this section to be recognized by the authority.

(c) Land not eligible. Floor area ratio transfers shall not involve an existing public park or open space.

(d) Mandatory conjoined application. All requests to create, convey and redeem floor area ratio

transfer credits shall be accompanied by and occur in conjunction with the following:

- (1) A project agreement including any accompanying permit approval request including, but not limited to, an improvement permit, a development permit, conditional use permit, variance, and master plan permit; and
- (2) A proposal to create, convey and redeem floor area ratio transfer credits shall be accompanied on forms promulgated by the executive director, and which contains the following information:
  - (A) Particular to sending site(s):
    - (i) A cover letter identifying the landowner's name, mailing address, and contact information and briefly explaining what the landowner seeks to accomplish;
    - (ii) A certificate of title demonstrating ownership of the proposed sending site(s) and receiving site;
    - (iii) A draft covenant that provides the protections and restrictions on the proposed property consistent with section 15-217-84 (h);
    - (iv) A baseline documentation report that establishes the current condition of the proposed sending site(s) and which contains, at a minimum: (1) general location map; (2) a legal description and sketch of parcel boundaries; and (3) documentation (such as maps, written summaries, and photographs) of existing conditions that relate to the proposed easement restrictions as well as the proposed rights

to be retained by the landowner;  
and

- (v) An affidavit, signed by the landowner and preparer of the submittal, attesting to the accuracy of the information contained in the baseline documentation report; and

- (B) Particular to a receiving site. Plans, diagrams and supporting text which clearly identifies and illustrates the location and extent of proposed floor area transfer credit.

(e) Decision-maker. The authority shall review and act upon all applications for floor area ratio transfers to create, convey and redeem floor area ratio transfer credits after receiving a recommendation from the executive director.

(f) Findings. The authority must make the following findings of fact in order to approve an application to create, convey and redeem floor area ratio transfer credits:

- (1) That the receiving site allows for additional floor area while complying with the building envelope requirements set forth in Figures BT.1 to BT.10, dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter, and building height requirements set forth in Figures NZ.1 to NZ.7, dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter; and
- (2) That the creation, conveyance and redemption of floor area ratio transfer credits, as proposed or as modified by the authority, enables the subject lots to fulfill the development objectives of the mauka area plan and mauka area rules.

(g) Limitations. The creation, conveyance and redemption of floor area ratio transfer credits shall be limited by the following parameters:

- (1) Floor area ratio transfer credits shall not be created or redeemed in conjunction with a variance approval to exceed any maximum building height, building footprint or reduce any setback related to Figure 1.6 (view corridors), dated [September 2011,] [REDACTED], made a part of this chapter, and attached at the end of this chapter;
- (2) No more than fifty per cent of the mauka area plan and mauka area rules maximum permitted floor area ratio shall be transferred from any sending site; provided, however, that contiguous lots may transfer one hundred per cent of the maximum permitted floor area ratio; and
- (3) Floor area ratio transfer credits shall be created and redeemed concurrently. No floor area ratio transfer credit may be reserved for future conveyance to a sending site.

(h) Covenant running with the land required. In order to establish floor area ratio transfer credits, the sending site landowner must record a covenant running with the land over the sending site(s) consistent with this section. The covenant must meet the following criteria:

- (1) The covenant shall run with the land on the sending site(s);
- (2) The covenant shall restrict the floor area ratio of the sending site(s) to the ratio established by the transfer; and
- (3) The covenant shall name the authority as an intended beneficiary with the right to enforce such covenant.

(i) Record keeping. The executive director will maintain a register of all floor area ratio transfer credits both created and redeemed pursuant to this section. On an annual basis, the executive director will update this register to reflect all known transfers and redemptions of floor area ratio transfer credits. [Eff [REDACTED] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]

**§15-217-85** Completeness review. (a) Purpose.

The purpose of the completeness review is to determine whether all required information is provided in a permit application. A completeness review shall not constitute a decision as to whether an application complies with the provisions of the rules.

(b) Applicability. This section applies to all applications for permits provided for in the rules.

(c) Application materials. No application may be deemed complete unless all of the information required by forms published by the HCDA is included and all filing fees have been paid. The executive director shall ensure that application materials are made available in hardcopy format at the HCDA office and electronically via the internet.

(d) Jurisdiction. All applications shall be reviewed by the executive director for completeness. At the time of proposed filing and fee payment, the executive director may reject any application that omits information required by forms published by the HCDA. Once accepted for filing, the executive director's final determination on completeness of an application is appealable to the authority pursuant to section 15-217-88 (appeals).

(e) Commencement of time limit for application decision. Whenever the rules establish a time period for processing an application, such time period does not commence until the executive director has issued a certificate of completeness.

(f) Multiple permit approvals. When a proposed project requires more than one permit approval, the applicant shall apply for all such permit approvals concurrently.

(g) Completeness review process:

- (1) The executive director shall provide a written determination on the completeness review within forty-five working days of receipt of the permit application. If a permit is deemed complete, the executive director shall issue a certificate of completeness. If the application is

determined not to be complete, the executive director's determination shall specify those parts of the application that are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application;

- (2) If the application requires review by any other local, state, or federal agency or entity, the executive director may require the written comments from such agency or entity prior deeming the application complete and until such time that the executive director receives all such comments, the forty-five day period shall be tolled;
- (3) Upon receipt of any application that has been resubmitted, a new forty-five day period shall begin, during which period the executive director shall determine the completeness of the application;
- (4) If the applicant contests the executive director's determination of an incomplete application, the applicant may appeal the executive director's determination to the authority pursuant to section 15-217-88, (appeals). If the authority does not render a decision on the appeal within thirty working days after submittal of the requisite appeal form and filing fee, the application with the submitted materials shall be deemed complete for the purposes of this section; and
- (5) Nothing in this section precludes an applicant and the executive director from mutually agreeing to an extension of any time limit provided by this section.

(h) Time limits. A certificate of completeness is deemed issued if the executive director fails to act within the time period required for completeness review. However, automatic approvals do not apply if



an applicant submits an application for an incorrect permit type. In computing time periods of this section, the day upon which the application was submitted is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

(i) Information requests. After the executive director issues a certificate of completeness or deemed as complete per section 15-217-85(c) (completeness review), the executive director or authority may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application, if such would be required by the decision-maker to render a final determination on the merits. [Eff ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-86 Automatic approvals.** (a) The following permits shall be deemed approved and require no public hearing if a certificate of completeness has been issued and no decision is rendered within the following review periods:

- (1) Zoning Clearance, Temporary Use Permit, and Rules clearance (sixty calendar days);
- (2) Improvement Permit and Renovation Permit (ninety calendar days);
- (3) Development permit (one hundred eighty calendar days);
- (4) Conditional use of vacant land permit (ninety calendar days);
- (5) Conditional use permit (one hundred eighty calendar days);
- (6) Variance (one hundred eighty calendar days); and
- (7) Master plan (two hundred calendar days).

(b) Whenever a proposed project requires more than one permit, the longest review period of section ~~[15-22-86]~~ 15-22-86(a) shall apply for determining the

deemed approved date. If one approval is required before proceeding with another approval, then the review periods will be added to one another.

[Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-87 Approval period.** (a) Rules clearance and zoning clearance approvals shall have an effective approval period of one year.

(b) Improvement permits, development permits[~~conditional use of vacant land~~], conditional use permits and variance approvals shall have an effective approval period of two years, unless extended under these rules.

(c) Master plan permits shall have an effective approval of ten years, unless extended pursuant to section 15-217-83(g).

(d) Prior to expiration and upon submittal of a written request and payment of the applicable filing fee, an improvement permit may be extended by the executive director for a period of up to one year. The executive director may issue up to two extensions. Development permits may be extended by the authority for a period of up to one year. The authority may issue up to two extensions for development permits.

(e) In computing the approval period, the day upon which the approval was granted is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.

(f) A permit will not lapse if construction or installation of approved work has commenced.

[Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-88 Appeals.** (a) Decisions of the executive director rendered in the administration of the rules are appealable, as provided herein, to the authority (see Figure 1.1 (approval requirements matrix), dated [September 2011], [REDACTED], made a

part of this chapter, and attached at the end of this chapter).

(b) An appeal of an executive director decision shall be sustained by the authority only if it finds:

- (1) The executive director's decision was based on an erroneous finding of material fact; or
- (2) The executive director acted in an arbitrary or capricious manner or had manifestly abused his or her discretion.

(c) All appeals of a decision by the executive director shall be filed and processed in accordance with HCDA's rules of practice and procedure, Hawaii administrative rules. [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-89 Subsequent applications.** If ~~[an]~~ a temporary use permit, renovation permit, improvement permit, development permit, conditional use of vacant land permit, conditional use permit, variance, or master plan permit is denied, a new application proposing substantially the same development for the same property shall not be filed within six months after the final decision. [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-90 Minor changes.** (a) After final approval of a rules clearance, temporary use permit, renovation permit, improvement permit, development permit, conditional use of vacant land permit, conditional use permit, master plan permit or variance, the executive director may allow minor amendments to the application without submittal of a new or amended application when the requested amendment(s) does not:

- (1) Materially increase the number of dwelling units, floor area, height, or any additional land-use disturbance;
- (2) Introduce different land uses;

- (3) Request larger land area;
  - (4) Request greater variance;
  - (5) Allow any diminution in buffer or transition areas, reduction in landscaping, reduction of required yards, or any change in the design characteristics or materials used in construction of the structures; or
  - (6) Reduce or eliminate conditions attached to the subject development approval.
- (b) Any other change requests which do not qualify under section 15-22-92(a) (minor changes) shall require the filing of a new application to be processed in accordance with this subchapter.
- [Eff                   ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-217-91 Nonconformities.** (a) Applicability. This section applies to nonconformities, including their continuation, enlargement, or expansion. There are two categories of nonconformities - uses, and structures.

(b) Continuation. A nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all authority statutes or regulations in effect at that time may continue subject to this section.

(c) Violation of rules. The violation of this section shall immediately disallow a nonconformity.

(d) Nonconforming uses:

- (1) Continuance of nonconforming uses. The lawful use of any structure existing as of the effective date of the rules may be continued, although such use does not conform to the provisions of the rules. Such use may be extended throughout the structure, provided that no structural alterations or additions to the structure occur, except those made in conformance with the rules. A conforming structure in which a nonconforming use is operated shall not be enlarged or extended except as may be

- required by the rules; and
- (2) Changes of use:
  - (A) Any nonconforming use may be changed to a use conforming with the rules established for the neighborhood zone in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not in the future be changed back to a nonconforming use;
  - (B) A nonconforming use may only be expanded under the provisions of section 15-217-91(f) (nonconformities); and
  - (C) If a nonconforming use is abandoned for twelve consecutive months, any future use of such premises shall be in conformity with the provisions of the rules. Abandonment of a nonconforming use shall terminate the right to continue the nonconformity.
- (e) Nonconforming structures:
  - (1) Continuance of nonconforming structures. Subject to the provisions of section 15-217-91(b), any nonconforming structure may be occupied, operated, and maintained in a state of good repair~~+~~. This may include the maintenance and repair of the exterior façade, roof, railings, and gutters of the nonconforming structures, as long as no nonconformities may be increased;
  - (2) Enlargement, conforming use. A nonconforming structure in which only permitted uses are operated may be enlarged or extended if the enlargement or extension can be made in compliance with all regulations established in subchapter 2 (regulating plan and neighborhood zones), subchapter 3 (thoroughfare plan and standards) and subchapter 4 (area wide standards); and
  - (3) Enlargement, nonconforming use. A

nonconforming structure in which only nonconforming uses are operated may be enlarged or extended if:

- (A) The enlargement or extension can be made in compliance with all provisions of subchapter 2 (regulating plan and neighborhood zones), subchapter 3 (thoroughfare plan and standards) and subchapter 4 (area wide standards); and
  - (B) The requirements of section 15-217-91(f) (nonconformities) are met;
- (4) Enlargement, limited up to twenty-five per cent of the floor area. A nonconforming structure may be altered or enlarged without compliance with all provisions of subchapter 2 (regulating plan and neighborhood zones), subchapter 3 (thoroughfare plan and standards) and subchapter 4 (area wide standards), provided that:
- (A) The floor area of the proposed construction does not exceed twenty-five per cent of the floor area of the structure as it legally existed on February 27, 1982, excluding proposed demolitions;
  - (B) The proposed construction does not encroach into a frontage area;
  - (C) The proposed construction does not ~~[exceed forty-five feet in height]~~ increase the nonconformity of the structure;
  - (D) The proposed construction does not affect neighboring properties;
  - (E) The parking requirements of this chapter are satisfied for the area proposed to be constructed; and
  - (F) The area created by the proposed construction is a permitted use;
- ~~[(5) Damage to structures. The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure is~~

~~damaged in any manner and from any cause whatsoever, and the cost of repairing such damage exceeds fifty per cent of the replacement cost of such structure on the date of such damage. In determining the replacement cost of any nonconforming structure, the cost of land or any factors other than the nonconforming structure itself shall not be included. The executive director shall require the submission of sufficient evidence to verify the cost of repairing such structure, with the final determination of replacement cost made by the executive director. A nonconforming single-family dwelling unit that is destroyed or damaged more than fifty per cent of the replacement cost may be rebuilt, provided that a development permit is issued within one year of the date of such damage or destruction. The executive director shall require the submission of sufficient evidence to verify the date of damage or destruction; and]~~

- [~~(6)~~] (5) Exception for repairs pursuant to public order. Nothing in this subsection shall be deemed to prevent the strengthening or restoration to a safe condition of a building or structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders it to restoration to a safe condition, provided that such restoration is not otherwise in violation of the various provisions of this subsection prohibiting the repair or restoration of partially damaged or destroyed buildings or structures.
- (f) Expansion of nonconformities:
- (1) Applicability. No nonconforming use or structure shall expand more than twenty-five per cent of the floor area of the structure,

exclusive of any proposed demolition, as it legally existed on February 27, 1982 unless a conditional use permit has been granted as set forth in section 15-217-81 (conditional use permit); and

- (2) Evaluation criteria. In addition to the criteria required to be met for a section 15-217-81(d) (conditional use permit), the following criteria shall apply to the issuance of a conditional use permit for the expansion of a nonconforming use or structure:

- (A) The termination of such nonconformity will result in unnecessary hardship;
- (B) The expansion of the nonconformity will not be contrary to the public interest;
- (C) The expansion of the nonconformity will not substantially or permanently injure the appropriate use of adjacent conforming property;
- (D) The use is consistent with the spirit and purpose of these regulations and the mauka area plan goals, objectives, and policies;
- (E) The plight of the applicant for which the expansion of the nonconformity is sought is due to unique circumstances existing on the property and within the surrounding area;
- (F) The expansion of the nonconformity will not substantially weaken the general purposes of this section or the regulations established in this section for the applicable neighborhood zone;
- (G) The expansion of the nonconformity will not adversely affect the public health, safety, and welfare; and
- (H) Nonconforming parking and loading may be continued, subject to the following provisions:
  - (1) If there is a change in use which has a greater parking or loading



- requirement than the former use, additional parking and loading shall be required and shall not be less than the difference between the requirements for the former use and the proposed use; and
- (2) Off-street parking and loading requirements of this section shall be satisfied for additional floor area constructed.
- [Eff ] (Auth: HRS §§206E-4, 206E-5, 206E-7, 206E-33)  
(Imp: HRS §§206E-4, 206E-5, 206E-7, 206E-33)

**§15-217-92 Violations and enforcement.** All provisions relating to violations of these rules and enforcement of said violations are provided in HCDA's rules of practice and procedure. [Eff ]  
(Auth: HRS §§206E-4, 206E-22) (Imp: HRS §206E-22)

**§15-217-93 Fee schedule.** The following fee schedule shall be applicable to all permits, rule clearance, and public hearings.

<u>Zoning Clearance</u>	<u>\$50</u>
<u>Temporary Use Permit</u>	<u>\$50</u>
[Rule] <u>Rules Clearance</u>	[ <del>\$20.00</del> ] <u>\$50</u>
<u>Renovation Permit</u>	<u>\$50</u>
Conditional Use of Vacant Land	[ <del>\$20.00</del> ] <u>\$50</u>

Improvement Permit	<u>Cost:</u>	<u>Project Size:</u>
	<del>[\$20]</del> <u>\$50</u>	up to 1,000 s.f.
	\$100	1,001-10,000 s.f.
	\$500	10,001- <del>[30,000]</del> <u>20,000</u> s.f.
	<del>[\$1,000 — &gt; 30,000 s.f.]</del>	
<u>Conditional Use Permit</u>	<u>\$50</u>	
Development Permit	\$6,400 plus the cost of public hearing	
Master Plan Permit	\$10,000 plus the cost of public hearing	
Variance	\$500 plus the cost of public hearing	

[Eff ] (Auth: HRS §§ 206E-4, 206E-5)  
 (Imp: HRS §§206E-4, 206E-5)

§§15-217-94 to 15-217-107 (Reserved).

## List of Figures

### General Figures:

1.1	Approval Requirements Matrix
1.2	Regulating Plan
1.3	Development Standards Summary
1.4	Thoroughfare Plan
1.5	Parks and Open Space Plan
1.6A	View Corridors
1.6B	View Preservation
1.7A	Street Tree Plan
1.7B	Street Tree Charts
1.8	Maximum Height Plan
1.9	Land Use
1.10	Parking
1.11	Civic Space
1.12	Building Form
1.13	Building Placement and Encroachments
1.14	Pedestrian Zone Treatment
1.15	Pedestrian Zone Fixtures
1.16	Flood Zone Design Standards

### Neighborhood Zone Figures:

NZ.1	Civic Center (CC)
NZ.2	Kapiolani (KA)
NZ.3	Thomas Square (TS)
NZ.4	Sheridan (SH)
NZ.5	Central Kakaako (CK)
NZ.6	Pauahi (PA)
NZ.7	Auahi (AU)

### Building Type Figures:

BT.1	Front Yard House
BT.2	Side Yard House
BT.3	Townhouse
BT.4	Duplex/Triplex/Quadplex
BT.5	Flex Loft
BT.6	Industrial Barn
BT.7	Courtyard
BT.8	Urban Block
BT.9	Lei Building
BT.10	Podium High Rise

#### Frontage Type Figures:

FT.1	Lanai and Front Yard
FT.2	Stoop
FT.3	Dooryard
FT.4	Forecourt
FT.5	Shopfront
FT.6	Chinatown Shopfront
FT.7	Raised Shopfront
FT.8	Terrace Front
FT.9	Raised Terrace Front
FT.10	Gallery
FT.11	Arcade
FT.12	Kakaako Frontage

#### Pedestrian Zone Figures:

<del>PZ.1</del>	<del>Civic Center (CC)</del>	
<del>PZ.2</del>	<del>Kapiolani (KA)</del>	
<del>PZ.3</del>	<del>Thomas Square (TS)</del>	
<del>PZ.4</del>	<del>Sheridan (SH)</del>	
<del>PZ.5</del>	<del>Central Kakaako (CK)</del>	
<del>PZ.6</del>	<del>Pauahi (PA)</del>	
<del>PZ.7</del>	<del>Auahi (AU)</del>	
<u>PZ.1</u>	<u>Pedestrian Zone Standards</u>	
<u>PZ.2</u>	<u>Pedestrian Zone Furniture</u>	

#### Incentive Zone Figures:

<u>IZ.1</u>	<u>Incentive Zoning Map</u>
<u>IZ.2</u>	<u>Incentive Zoning Table</u>
<u>IZ.2.1</u>	<u>Approved Public Facilities List</u>



**FIGURE 1.1 APPROVAL REQUIREMENTS MATRIX**

Rule	Development Approvals	Decision - Maker	
		Executive Director	Authority
§15-217-28	Incentive Zone	Recommends Action	<b>Decision</b>
§15-217-64	Conditional Use of Vacant Land	<b>Decision</b>	Considers Appeal
§15-217-76	Zoning clearance	<b>Decision</b>	Considers Appeal
§15-217-77	Temporary use permit	<b>Decision</b>	Considers Appeal
§15-217-78	Rules clearance	<b>Decision</b>	Considers Appeal
§15-217-79	Renovation permit	<b>Decision</b>	Considers Appeal
§15-217-80	Improvement Permit	<b>Decision</b>	Considers Appeal
§15-217-80	Development Permit	Recommends Action	<b>Decision</b>
§15-217-81	Conditional Use Permit	Recommends Action	<b>Decision</b>
§15-217-83	Master Plan	Recommends Action	<b>Decision</b>
§15-217-82	Minor Variance	<b>Decision</b>	Considers Appeal
§15-217-82	Major Variance	Recommends Action	<b>Decision</b>
§15-217-84	Floor Area Ratio Transfer	Recommends Action	<b>Decision</b>

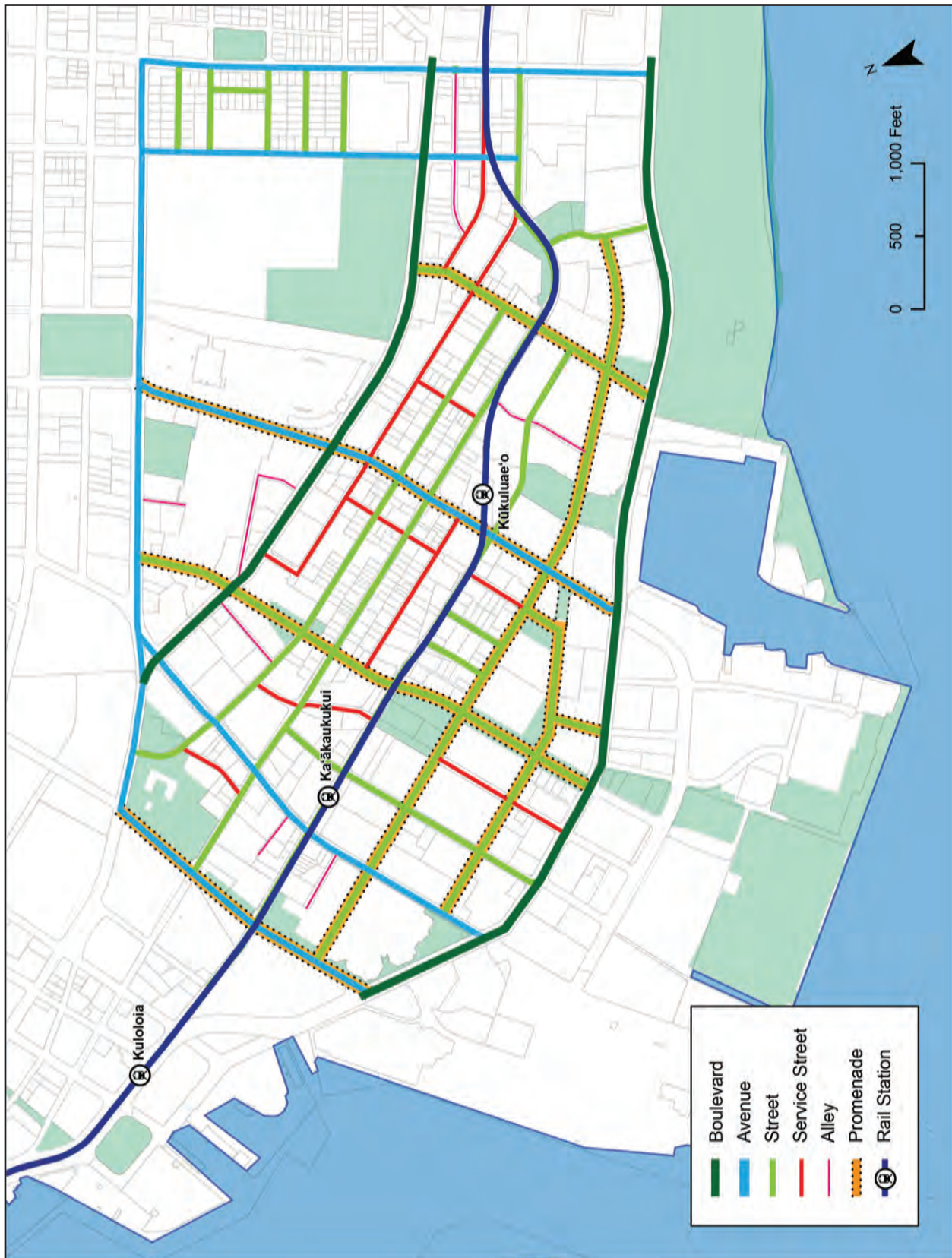
This map illustrates the Kaka'ako neighborhood in Honolulu, divided into several sub-neighborhoods: Civic Center, Kapiolani, Thomas Square, Central Kaka'ako, Pauahi, Auahi, and Sheridan. The map also shows the Kūkuluāe'o rail station, the Ala Moana Blvd, and the Kūkuluāe'o rail line. The map includes a legend for Neighborhood Boundary, Parks and Open Space, Rail Station, and Mauka Area Boundary. A scale bar indicates distances up to 1,000 feet, and a north arrow is present.

**FIGURE 1.3 DEVELOPMENT STANDARDS SUMMARY**

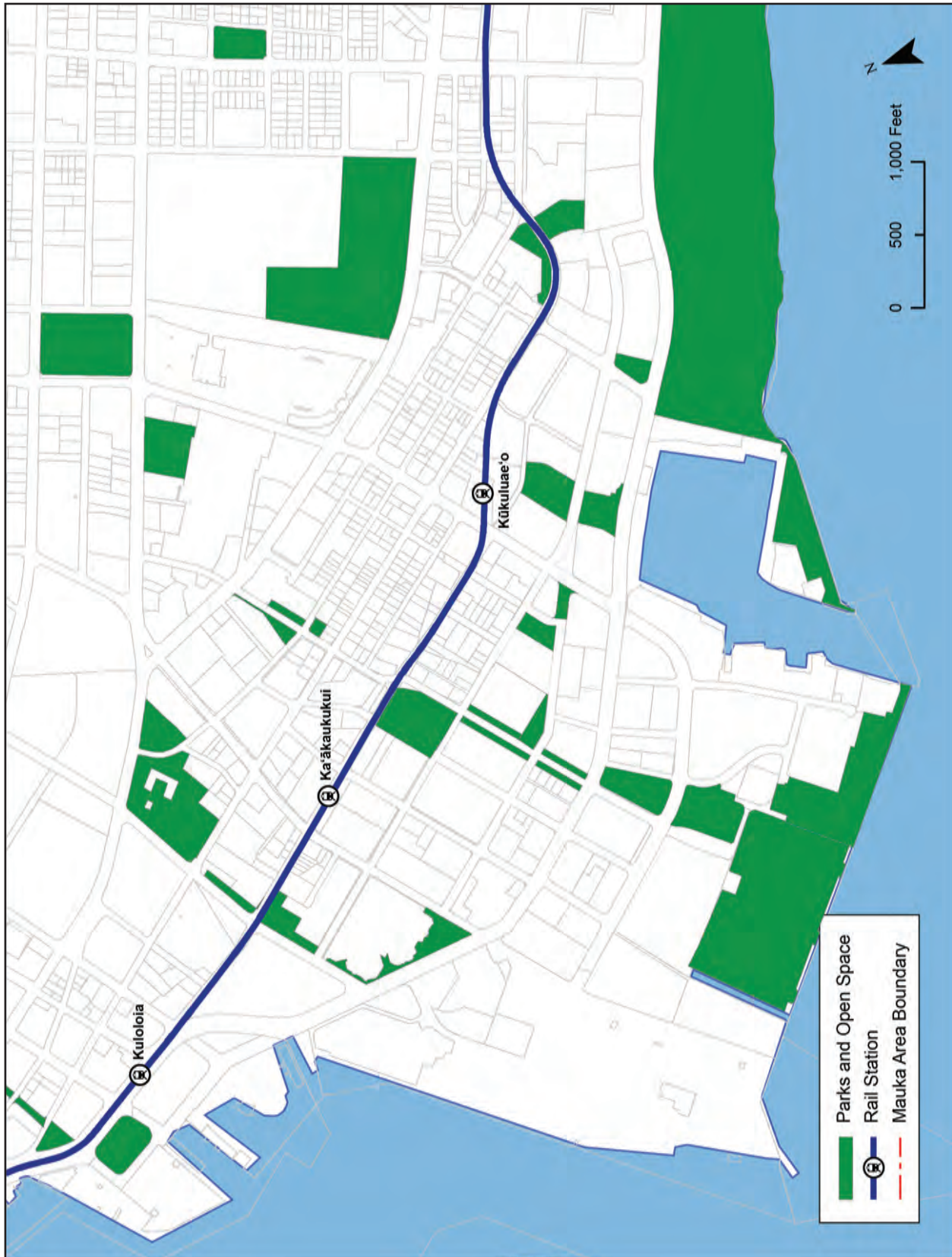
	Civic Center	Kapiolani	Thomas Square	Sheridan	Central Kakaako	Pauahi	Auahi
<b>A. Building Types</b>							
Podium High-Rise	✓*	✓	✓	-	✓*	✓	✓
Urban Block	✓	✓	✓	✓*	✓*	✓	✓
Lei Building	✓	✓	✓	✓*	✓*	✓	✓
Courtyard	✓	✓	✓	✓	✓	✓	✓
Duplex / Triplex / Quadplex	-	✓*	✓	✓	✓	-	-
Townhouse	-	✓*	✓	✓	✓	-	-
Flex/ Loft	✓	-	-	✓	✓	✓	✓
Industrial Barn	-	-	-	-	✓	✓	✓
Side Yard House	-	-	-	✓	-	-	-
Front Yard House	-	-	-	✓	-	-	-
<b>B. Frontage Types</b>							
Lanai and Front Yard	-	-	-	✓	-	-	-
Stoop	✓	✓	✓	✓	✓	✓	✓
Dooryard	✓	✓	✓	✓	✓	✓	✓
Forecourt	✓	✓	✓	✓	✓	✓	✓
Shopfront	✓	✓	✓	✓	✓	✓	✓
Chinatown Shopfront	✓*	✓*	✓*	✓*	✓*	✓*	✓*
Raised Shopfront	-	✓*	✓*	✓*	✓*	✓*	✓*
Raised Terrace Front	-	✓*	✓*	✓*	✓*	✓*	✓*
Terrace Front	✓	✓	✓	-	✓	✓	✓
Gallery and Arcade	✓*	✓*	✓*	✓*	-	✓*	✓*
Kakaako Frontage	-	✓*	-	-	✓	-	-
<b>C. Building Placement</b>							
Front Build-to-line	0'-20'	ns-15'	7'-15'	7'-12'	ns-15'	ns-40'	ns-15'
Minimum Frontage occupancy at build-to-line	60%	75%	60%	50%	75%	60%	75%
Setback side	0'	0'	0'	3'	0'	0'	0'
Setback rear	0'	0'	0'	3'	0'	0'	0'
<b>D. Building Form</b>							
Maximum Height	65'	400'	400'	65'	400'	400'	400'
Street Front Element Height	30-65'	30-65'	30-65'	15-65'	20-65'	40-65'	40-65'
Maximum Density (FAR)	5.5	5.5	5.5	2	1.5-3.5 <sup>a</sup>	5.5	5.5
<div> <div>✓ Permitted</div> <div>✓* Permitted with exception (See NZ.1- NZ.7)</div> <div><sup>a</sup>See §15-217-57, Adequate Infrastructure</div> </div> <div> <div>- Not permitted</div> <div>ns Not specified</div> </div>							



FIGURE 1.4 THOROUGHFARE PLAN



**FIGURE 1.5 PARKS AND OPEN SPACE PLAN**





[illegible]

**Legend:**

- Selected View Corridors used to establish Mauka-Makai axis
- Approximate view preservation zone
- 300' Tower 300'
- R Rail station

**Map Labels:**

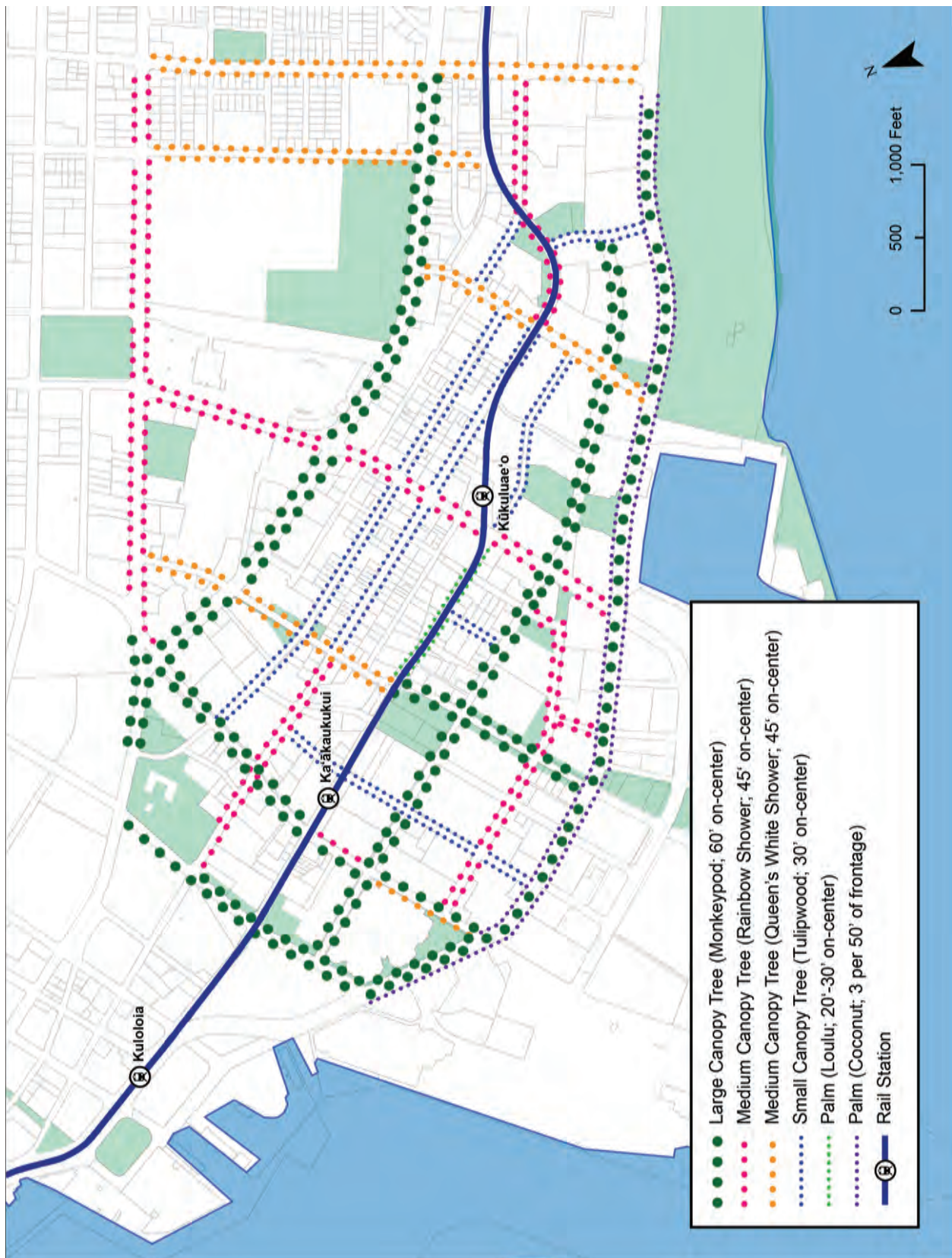
- Streets:** Alohi Way, Elm, Pansicola, Ryecliff, Hoolali, Kamalii, Pilikoi, Hopaka, Kona, Kapoia Blvd, Waimanu, Kawaiaha'o, Cummins, Robinson Ln, Kamahee, Ala Moana Blvd, Kamanj, Ahui, Halekaniwa, Ilianiwai, Queen, Dreier, Curtis, Emily, Quinn Ln, Reed Ln, South, Keawe, Coral, Cooke, Auahi, Clayton, S. King.
- Stations:** Kūloa, Kūkūlūae'o, Kā'ākaukukui.
- Other:** Punchbowl, Ala Moana Blvd, Ala Moana Blvd.

**Scale:** 0, 500, 1,000 Feet

**North Arrow:** N



**FIGURE 1.7 STREET TREE PLAN**



**FIGURE 1.7B STREET TREE CHARTS**

Street	Type	Common Name	Scientific Name	Spacing	Tree Well*	Planting Strip *
<b>Mauka-Makai</b>						
Punchbowl Street	AV	Monkey Pod	Samanea saman	60'	10' x 10'	10'
South Street	AV	Queen's White Shower	Cassia x nealiae	45'	5' x 5'	5'
Keawe Street	ST	Tulipwood	Harpulia pendula	30'	4' x 6'	4'
Cooke Street	ST	Queen's White Shower	Cassia x nealiae	45'	5' x 5'	5'
Ahui Street	ST	Tulipwood	Harpulia pendula	30'	4' x 6'	4'
Ward Avenue	AV	Rainbow Shower	Cassia x nealiae	45'	5' x 5'	5'
Kamakee Street	ST	Queen's White Shower	Cassia x nealiae	45'	5' x 5'	5'
Queen Street Extension	ST	Tulipwood	Harpulia pendula	30'	4' x 6'	4'
Pensacola	AV	Queen's White Shower	Cassia x nealiae	45'	5' x 5'	5'
Piikoi	AV	Queen's White Shower	Cassia x nealiae	45'	5' x 5'	5'
<b>Ewa-Diamond Head</b>						
King Street	AV	Rainbow Shower	Cassia x nealiae	45'	5' x 5'	5'
Kapiolani Boulevard	BV	Monkey Pod	Samanea saman	60'	10' x 10'	10'
Waimanu Street (Kamakee to Queen)	ST	Tulipwood	Harpulia pendula	30'	4' x 6'	4'
Waimanu Street (Queen to Piikoi)	ST	Rainbow Shower	Cassia x nealiae	45'	5' x 5'	5'
Kawaiahao Street	ST	Tulipwood	Harpulia pendula	30'	4' x 6'	4'
Queen Street (Punchbowl to Cooke)	ST	Rainbow Shower	Cassia x nealiae	45'	5' x 5'	5'
Queen Street (Cooke to Kamakee)	ST	Tulipwood	Harpulia pendula	30'	4' x 6'	4'
Queen Street (Kamakee to Waimanu)	ST	Rainbow Shower	Cassia x nealiae	45'	5' x 5'	5'
Halekauwila Street (Punchbowl to South)	ST	Monkey Pod	Samanea saman	60'	10' x 10'	10'
Halekauwila Street (South to Ward)	ST	Tulipwood	Harpulia pendula	30'	4' x 6'	4'
Pohukaina Street	ST	Rainbow Shower	Cassia x nealiae	45'	5' x 5'	5'
Auahi Street (South to Ahui)	ST	Loulu Palm	Pritchardia schattaurei	20-30'	4' x 6'	4'
Auahi Street (Ward to Queen Street Ext.)	ST	Rainbow Shower	Cassia x nealiae	45'	5' x 5'	5'
Ala Moana Boulevard (Median)	AV	Monkey Pod	Samanea saman	60'	N/A	10'
Ala Moana Boulevard (Pedestrian Zone)	AV	Coconut Palm	Cocos nucifera	3 per 50' of frontage	N/A	10'

BV

Boulevard

AV

Avenue

ST

Street



[illegible]

**FIGURE 1.9 LAND USE**

	Civic Center	Kapiolani	Thomas Square	Sheridan	Central Kaka'ako	Pauahi	Auahi
<b>A. Residential</b>							
Single Family	-	-	✓	-	-	-	-
Multi-Family	✓	✓	✓	✓	✓	✓	✓
Second Unit	-	✓	✓	✓	✓	✓	-
Group Home	-	✓	✓	✓	✓	✓	✓
Home Occupation	✓	✓	✓	✓	✓	✓	✓
<b>B. Administrative</b>							
Administrative	✓	✓	✓	✓	✓	✓	✓
<b>C. Goods and Services</b>							
Alcohol Sales	✓	✓	CU	✓	✓	✓	✓
Artisan/Craft Production	✓	✓	✓	✓	✓	✓	✓
Dance-Nightclub	CU	✓	-	✓	✓	✓	✓
Indoor Recreation	✓	✓	-	✓	✓	✓	✓
Live-Work	✓	✓	✓	✓	✓	✓	✓
Outdoor Recreation	✓	✓	-	✓	✓	✓	✓
Personal Services	✓	✓	✓	✓	✓	✓	✓
Recycling Collection Facility	✓	✓	✓	✓	✓	✓	✓
Restaurants and Bars	✓	✓	CU	✓	✓	✓	✓
Retail Sales	✓	✓	✓	✓	✓	✓	✓
<b>D. Civic</b>							
Group Assembly	✓	✓	✓	✓	✓	✓	✓
Conference Center	✓	✓	-	CU	-	✓	✓
Cultural Facilities	✓	✓	✓	✓	✓	✓	✓
Park and Recreation	✓	✓	-	-	✓	✓	✓
Public Building	✓	✓	-	✓	✓	✓	✓
Religious Facility	✓	✓	✓	✓	✓	✓	✓
Theater	✓	✓	-	✓	✓	✓	✓

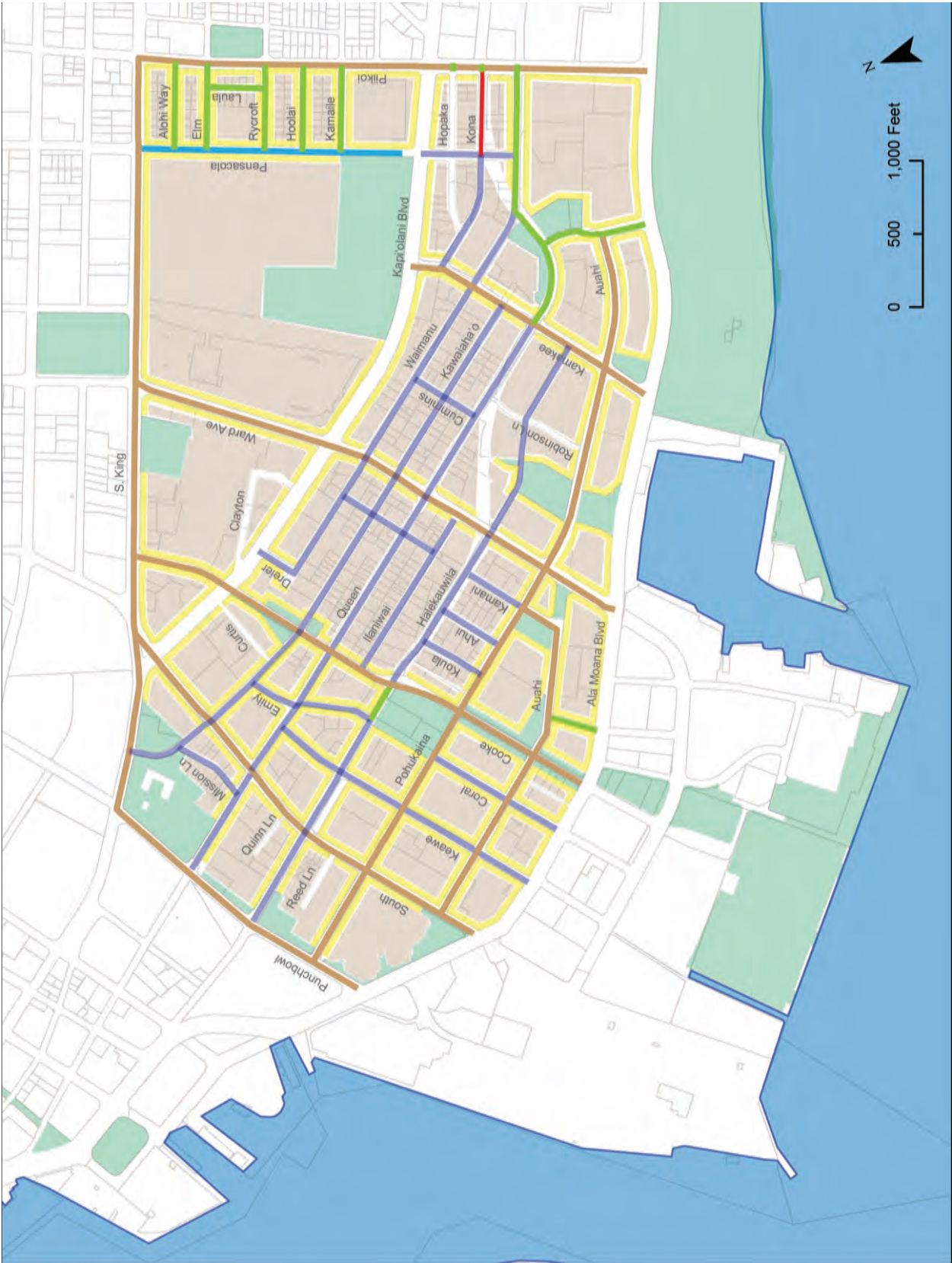
	Civic Center	Kapiolani	Thomas Square	Sheridan	Central Kaka'ako	Pauahi	Auahi
<b>E. Automotive</b>							
Automobile Repair	-	-	-	CU	✓	✓	-
Gas Station	-	CU	-	CU	✓	CU	CU
Auto/Rental Sales*	-	-	-	✓	✓	✓	CU
Parking Facility	✓	✓	CU	✓	✓	✓	✓
<b>F. Civil Support</b>							
Consulates	✓	✓	✓	✓	✓	✓	✓
Hospital	✓	✓	-	✓	-	✓	✓
Medical and Dental Clinic	✓	✓	✓	✓	✓	✓	✓
<b>G. Educational</b>							
Day Care Center	✓	✓	✓	✓	✓	✓	✓
Day Care Home	-	✓	✓	-	✓	-	-
Educational Facilities	✓	✓	✓	✓	✓	✓	✓
Vocational School	✓	✓	-	✓	✓	✓	✓
<b>H. Industrial</b>							
Laboratory Facility	✓	✓	-	✓	✓	✓	✓
Light Industrial	✓	✓	-	✓	✓	✓	✓
Media Production	✓	✓	-	✓	✓	✓	✓
Printing and Publishing	✓	✓	-	✓	✓	✓	✓
Warehousing	✓	✓	-	✓	✓	✓	✓

**Legend**



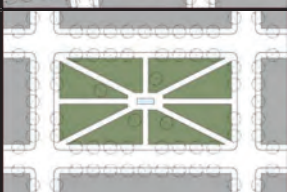
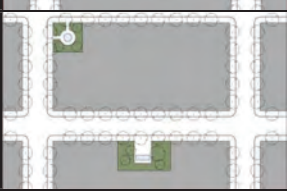

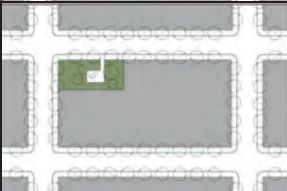
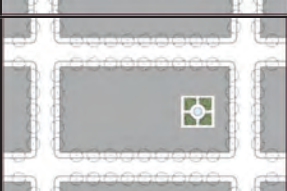
- ✓ Permitted
- cu Requires conditional use permit
- Not Permitted



FIGURE 1.10 PARKING



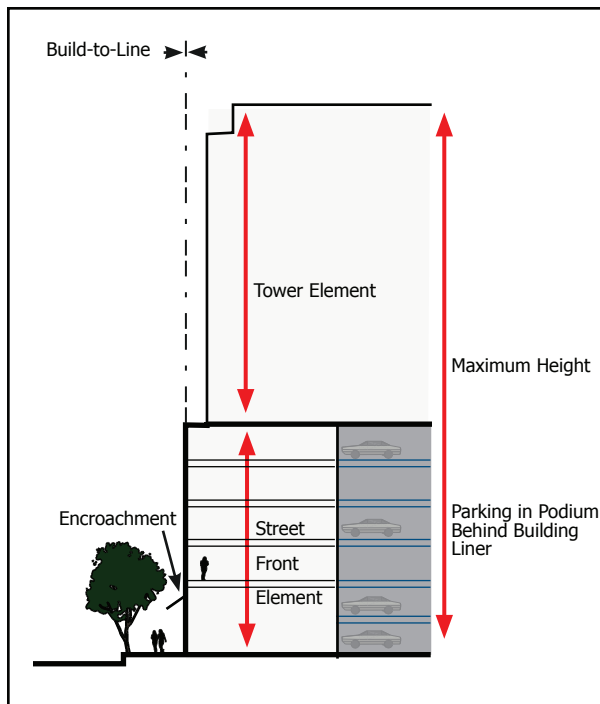
**FIGURE 1.11 CIVIC SPACE**

Type	Description	Illustrative Diagram	Civic Center	Kapiolani	Thomas Square	Sheridan	Central Kaka'ako	Pauahi	Auahi
<b>Park</b>	A passive recreational area with a natural landscape character. A park may be independent of surrounding building frontages. The landscape shall consist of paths, water bodies, open areas defined by informal tree and palm massing and open shelters all naturalistically disposed. Parks may be linear, connecting various blocks of the larger neighborhoods. The minimum size is 2 acres and there is no maximum size. Example: Kakaako Waterfront Park and Kolowalu Park.		-	-	✓	-	-	✓	✓
<b>Green</b>	An open space available for passive recreation. A green may be spatially defined by landscaping rather than building frontages. Its landscape shall consist of lawn and trees, naturalistically disposed with minimal hardscape. The minimum size of a Green is ¼ acre and the maximum is 5 acres. Example: Makai Gateway Park.		-	-	✓	-	-	✓	✓
<b>Square</b>	An open space available for passive recreation and civic purposes. A square is spatially defined by building frontages. Its landscape shall consist of paths, lawns and trees, formally disposed with hardscape elements. Squares shall be located at the intersection of important thoroughfares. The minimum size of a Square is 1/4 acres and the maximum is 2 acres. Example: Sir Admiral Thomas Square.		✓	-	✓	-	✓	✓	✓
<b>Pocket Park</b>	A park for passive recreational use and informal gathering or relaxation with minimal hardscape. Pocket parks will be interspersed within each neighborhood with exception to the Thomas Square neighborhood. The maximum size of a Pocket Park is ¼ acre. Example: the park at the corner of Cooke and Kawaiahao Streets.		✓	✓	-	✓	✓	✓	✓
<b>Plaza</b>	An open space available to civic purposes and commercial activities. A plaza shall be spatially defined by building frontages. Its landscape shall consist primarily of hardscape and pavement and strategically placed trees and/or palms. Plazas shall be located at the intersection of prominent streets. The maximum size of a Plaza is 1/4 acre. Example: Tamarind Park at the corner of Bishop and South King Streets.		✓	✓	✓	✓	✓	✓	✓
<b>Playground</b>	An open space designed and equipped for the recreation of children and families. A playground shall be fenced and may include an open shelter. Playgrounds shall be interspersed within residential areas and may be placed within a block. Playgrounds may be included within Parks and Greens. There shall be no minimum or maximum size. Example: Mother Waldron Neighborhood Park and Sheridan Community Park.		✓	✓	✓	✓	✓	✓	✓
<b>Courtyard</b>	An open space internal to the block and available for passive recreation for the adjacent land uses. A courtyard is spatially defined by building frontage on all sides. Its landscaping shall primarily consist of pavement, trees and palms are optional. Size as per Building Type standards. Examples: Various Chinatown courtyards and Kamehameha Schools Building at King and South Streets.		✓	✓	✓	✓	✓	✓	✓

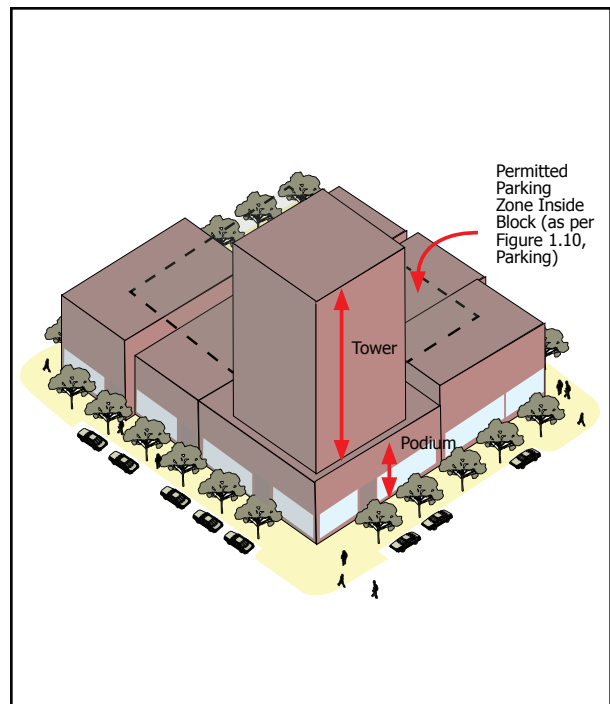
✓	Permitted
-	Not Permitted

**FIGURE 1.12 BUILDING FORM**

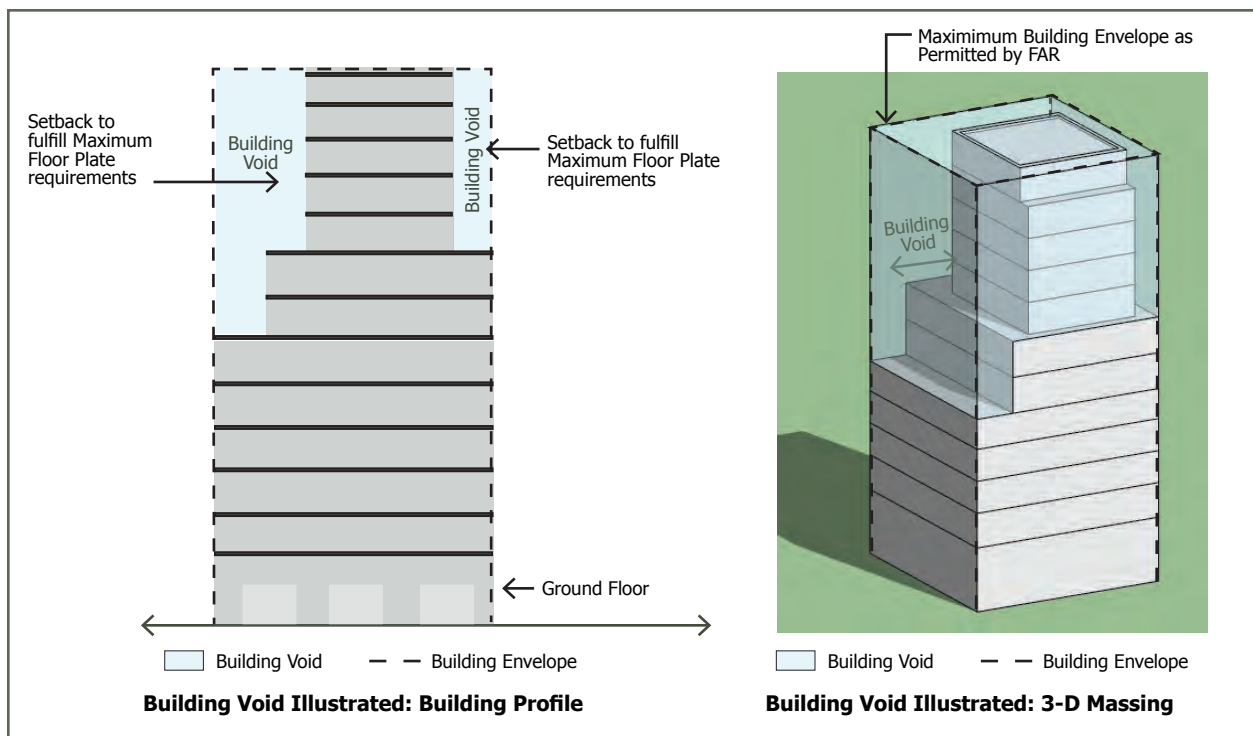
**1.12-A Illustrative Building Form Diagram**



**1.12-B Illustrative Building Form Diagram**

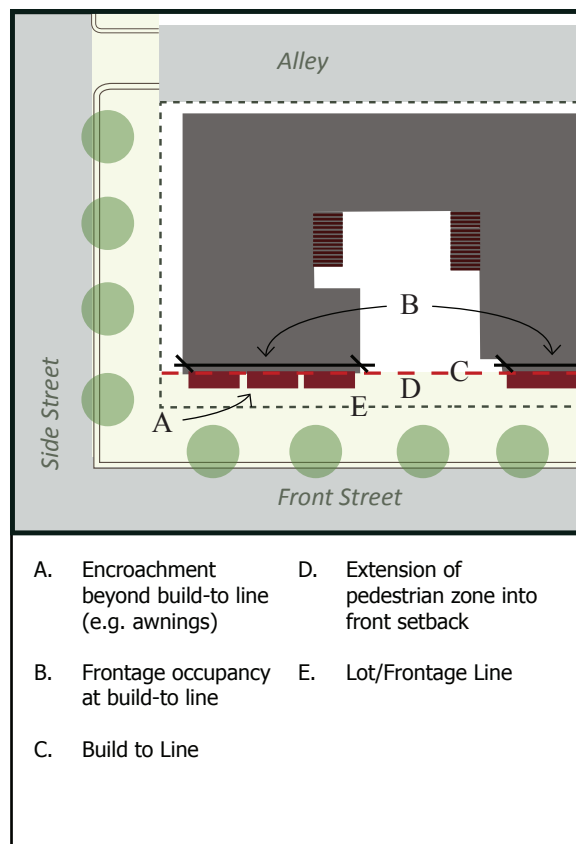
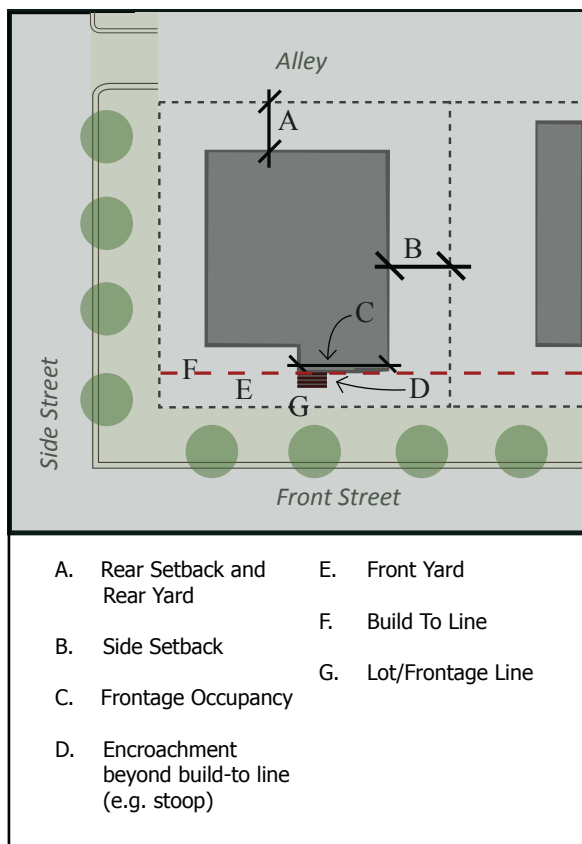


**1.12-C Illustrative Building Void and Floor Plate Diagrams**



See Section 15-217-8, Definitions, for detailed definitions.

**FIGURE 1.13 BUILDING PLACEMENT AND ENCROACHMENTS**



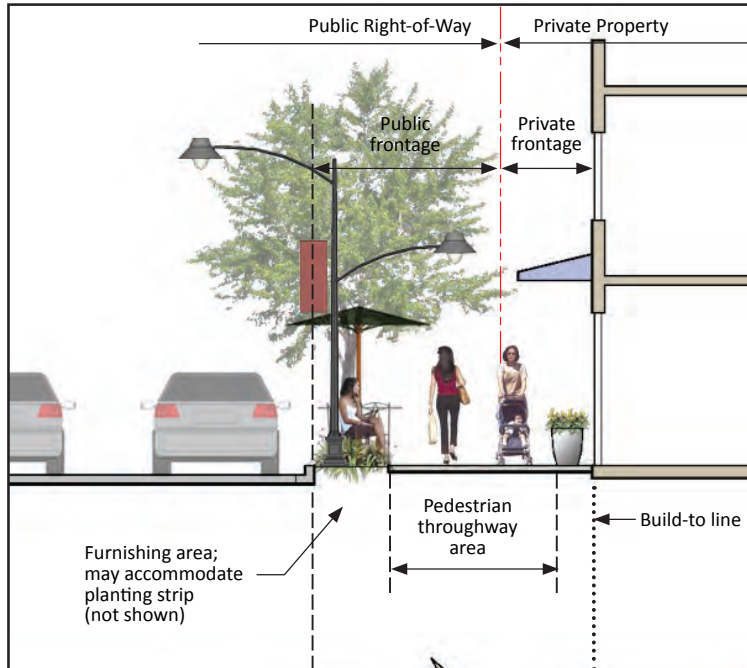
**1.13-C Encroachments**

	Minimum Vertical Clearance	Maximum Horizontal Clearance
<b>Front Encroachments</b>		
Awnings	16'	No more than 10' or 66% of the distance from the building face to the curb, whichever is less.
Signage	12'	No more than 4' or 33% of the distance from the building face to the curb, whichever is less.
Gallery / Arcade / Chinatown Shopfront	16'	Within 2' of curb (must contain ground floor retail)
Bay Windows and Architectural Features	21'	8' from building face, but not to extend over the lot line.
Balconies / Porches	21'	8' from building face, but not to extend over the lot line.
<b>Side and Rear Encroachments</b>		
Balconies, Decks, and Architectural Features	12' (when above the ground floor)	10' from the lot line



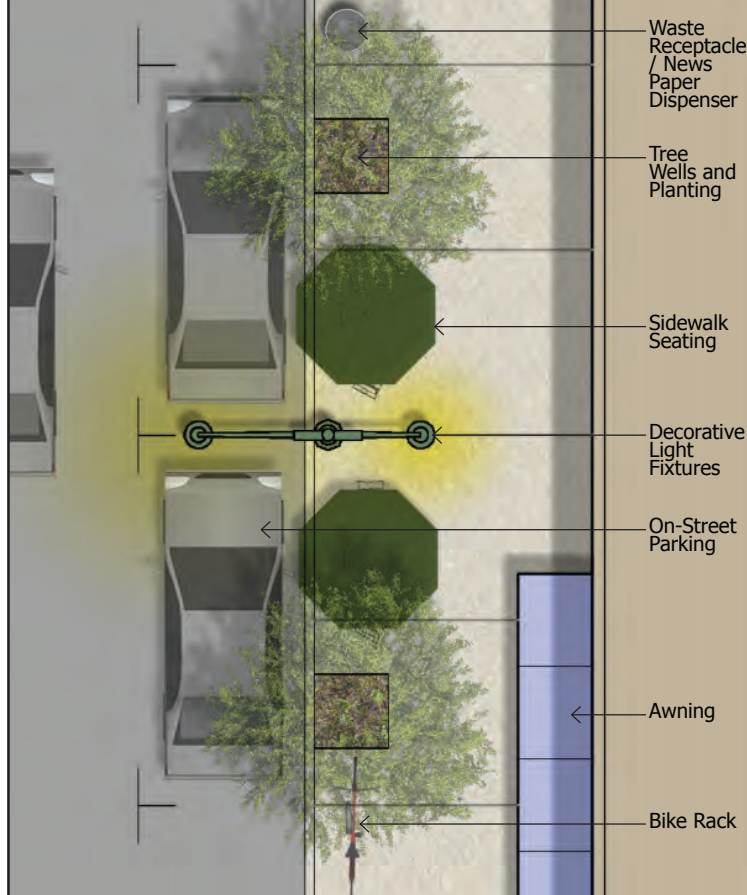
**FIGURE 1.14 PEDESTRIAN ZONE TREATMENT**

**1.14-A Section View, Illustrative Pedestrian Zone Treatment: Typical Condition, Guideline Only**

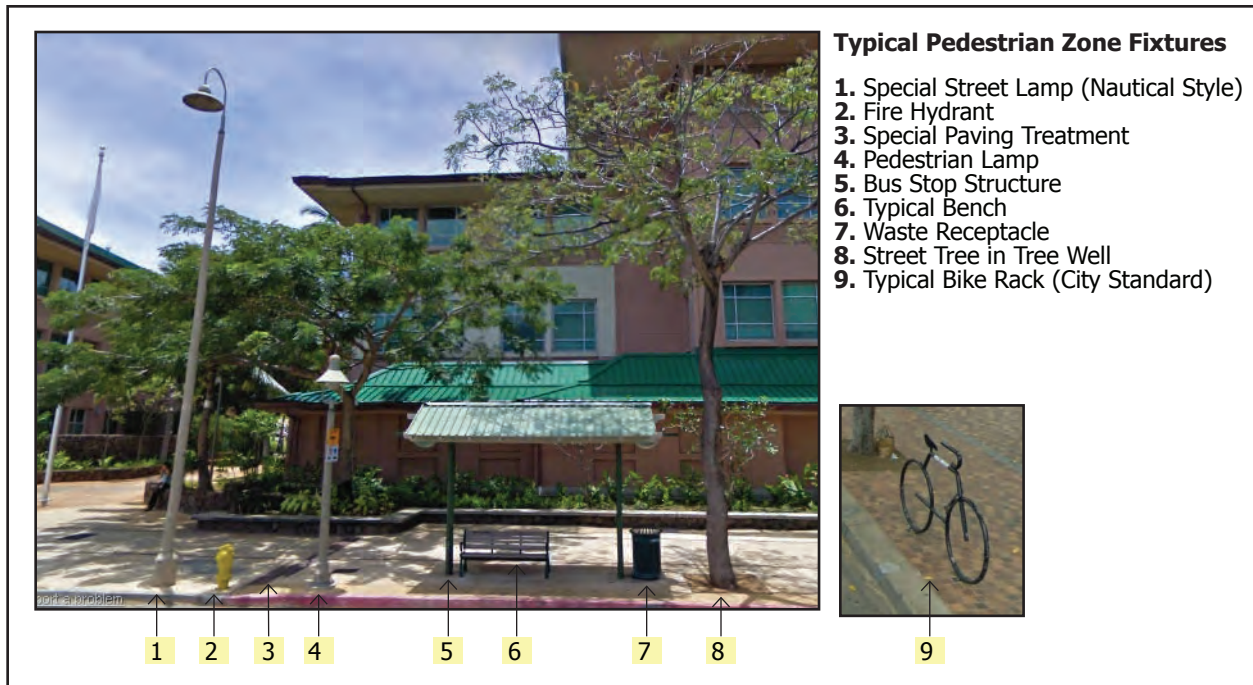


Refer to Figure PZ.1  
for dimensions

**1.14-B Plan View, Illustrative Pedestrian Zone Treatment**



**FIGURE 1.15 PEDESTRIAN ZONE FIXTURES**



**1.15-A Typical Pedestrian Zone Fixtures**

**1.15-B Lighting Fixtures for Promenade Streets**



**1.15-C Lighting Fixtures for all Other Streets**



## FIGURE 1.16 FLOOD ZONE DESIGN

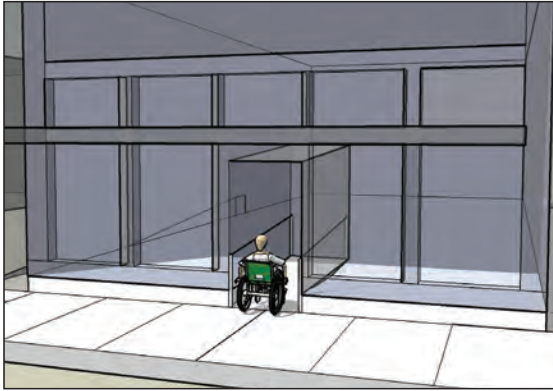
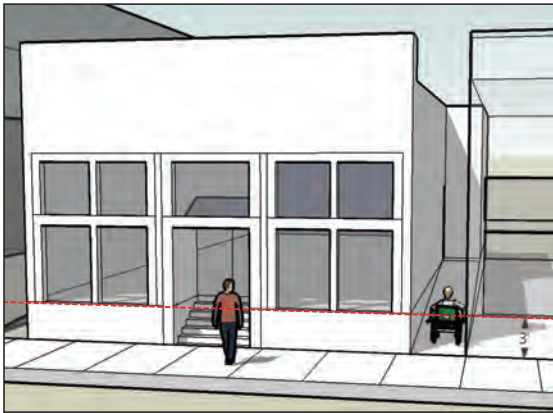
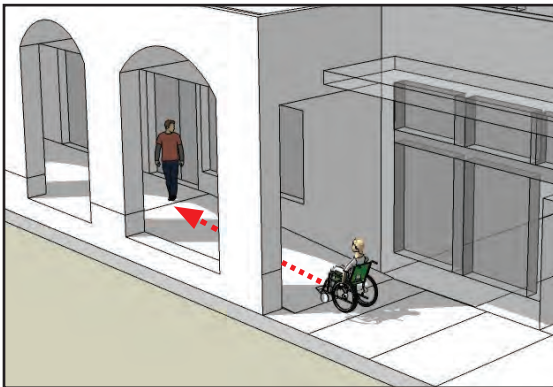


Figure 1.16-A Internal Wheelchair Ramp (illustrative image)



Figures 1.16-B and 1.16-C External wheelchair ramps accessed directly from sidewalk to ensure easy access. Ramps are located on the side of building (illustrative images).



Figures 1.16-D and 1.16-E External wheelchair ramps accommodated under an arcade (illustrative images).



**FIGURE NZ.1 CIVIC CENTER ZONE (CC)**



A. Building Types - Max Height	
Podium High Rise	-
Urban Block	65'
Lei Building	65'
Courtyard Building	55'
Duplex / Triplex / Quadplex	-
Townhouse	-
Flex / Loft	45'
Industrial Barn	-
Side Yard House	-
Front Yard House	-

B. Frontage Types	
Lanai and Front Yard	-
Stoop	✓
Dooryard	✓
Forecourt	✓
Shopfront	✓
Chinatown Shopfront	✓*
Raised Shopfront	✓
Raised Terrace Front	✓
Terrace Front	-
Gallery and Arcade	✓*
Kaka'ako Frontage	-

C. Building Placement	
Front Build-to line	0' to 20'
Frontage Occupancy at Build-to line	50% min.
Setback Side	0'
Setback Rear	0'

D. Building Form	
Maximum Height	65'
Street Front Element Height Range	30' to 65'
Maximum Density (FAR)	3.5

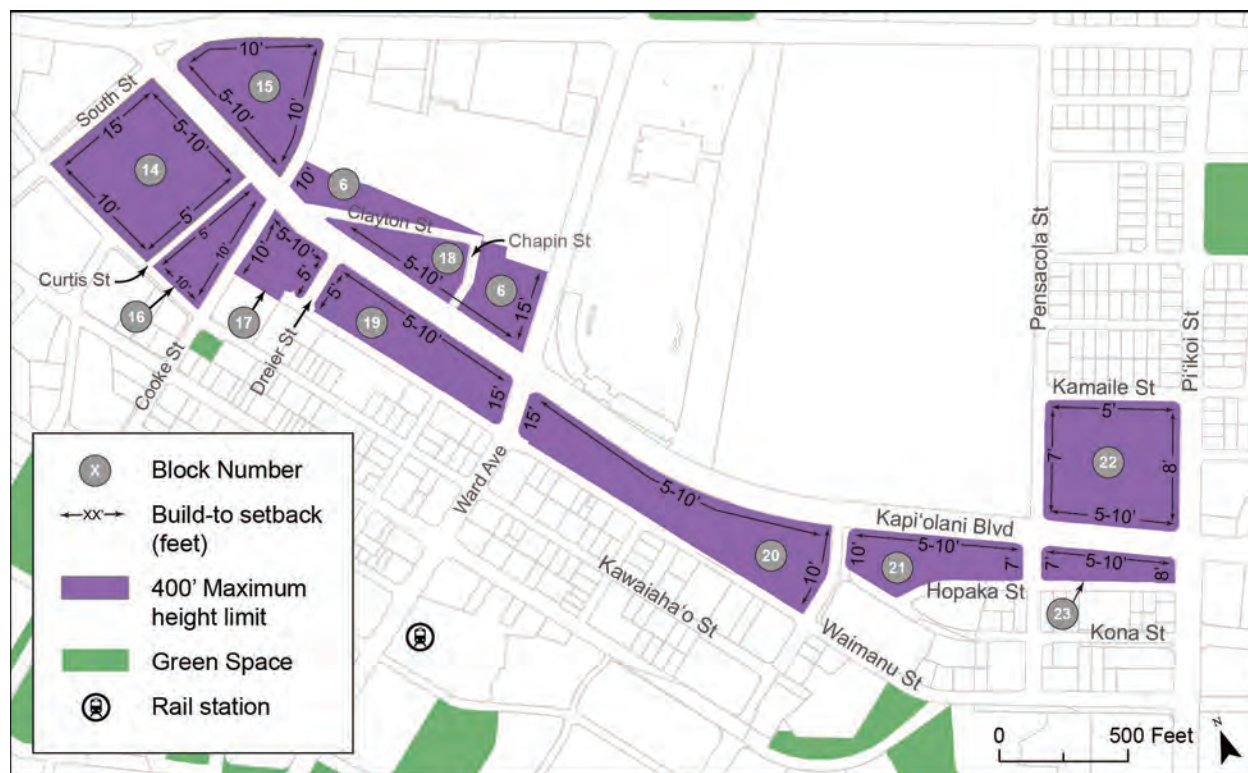
**Footnotes:**

- Chinatown Shopfronts are allowed only on the thoroughfares indicated in Figure FT.6.
- Gallery and Arcades are permitted on King Street, Halekauwila Street, and Pohukaina Street.
- Gallery and Arcades frontage types shall contain retail use.
- A Terrace Front frontage type shall be required where build to lines are greater than 15 feet.

Legend	
✓	Permitted
✓*	Permitted with exceptions
-	Not Permitted



**FIGURE NZ.2 KAPIOLANI ZONE (KA)**



A. Building Types - Max Height	
Podium High Rise	400'
Urban Block	100'
Lei Building	100'
Courtyard Building	55'
Duplex / Triplex / Quadplex	45'
Townhouse	45'
Flex / Loft	-
Industrial Barn	-
Side Yard House	-
Front Yard House	-

B. Frontage Types	
Lanai and Front Yard	-
Stoop	✓
Dooryard	✓
Forecourt	✓
Shopfront	✓
Chinatown Shopfront	✓*
Raised Shopfront	✓*
Raised Terrace Front	✓*
Terrace Front	✓
Gallery and Arcade	✓*
Kaka'ako Frontage	✓*

C. Building Placement	
Front Build-to line	n/s to 15'
Frontage Occupancy at Build-to line	75% min.
Setback Side	0'
Setback Rear	0'

D. Building Form	
Maximum Height	400'
Street Front Element Height Range	30' to 65'
Maximum Density (FAR)	3.5

**Footnotes:**

- The Duplex/Triplex/Quadplex building type is permitted on Block 22 only.
- The Townhouse building type is permitted on Block 22 only.
- Raised Frontages are only allowed in Flood Zones to accommodate necessary flood elevation and shall not be used in other locations.
- Chinatown Shopfronts are allowed only on the thoroughfares indicated in Figure FT.6.
- Gallery and Arcades are permitted on Kapiolani Boulevard only.
- Gallery and Arcades shall contain retail use.
- The Kaka'ako Frontage is permitted along Waimanu Street only.
- All buildings over 100 feet shall be subject to the Podum High Rise building standards.

**FIGURE NZ.3 THOMAS SQUARE ZONE (TS)**



A. Building Types - Max Height	
Podium High Rise	400'
Urban Block	100'
Lei Building	100'
Courtyard Building	55'
Duplex / Triplex / Quadplex	45'
Townhouse	45'
Flex / Loft	-
Industrial Barn	-
Side Yard House	-
Front Yard House	-

B. Frontage Types	
Lanai and Front Yard	-
Stoop	✓
Dooryard	✓
Forecourt	✓
Shopfront	✓
Chinatown Shopfront	✓*
Raised Shopfront	✓*
Raised Terrace Front	✓*
Terrace Front	✓
Gallery and Arcade	✓*
Kaka'ako Frontage	-

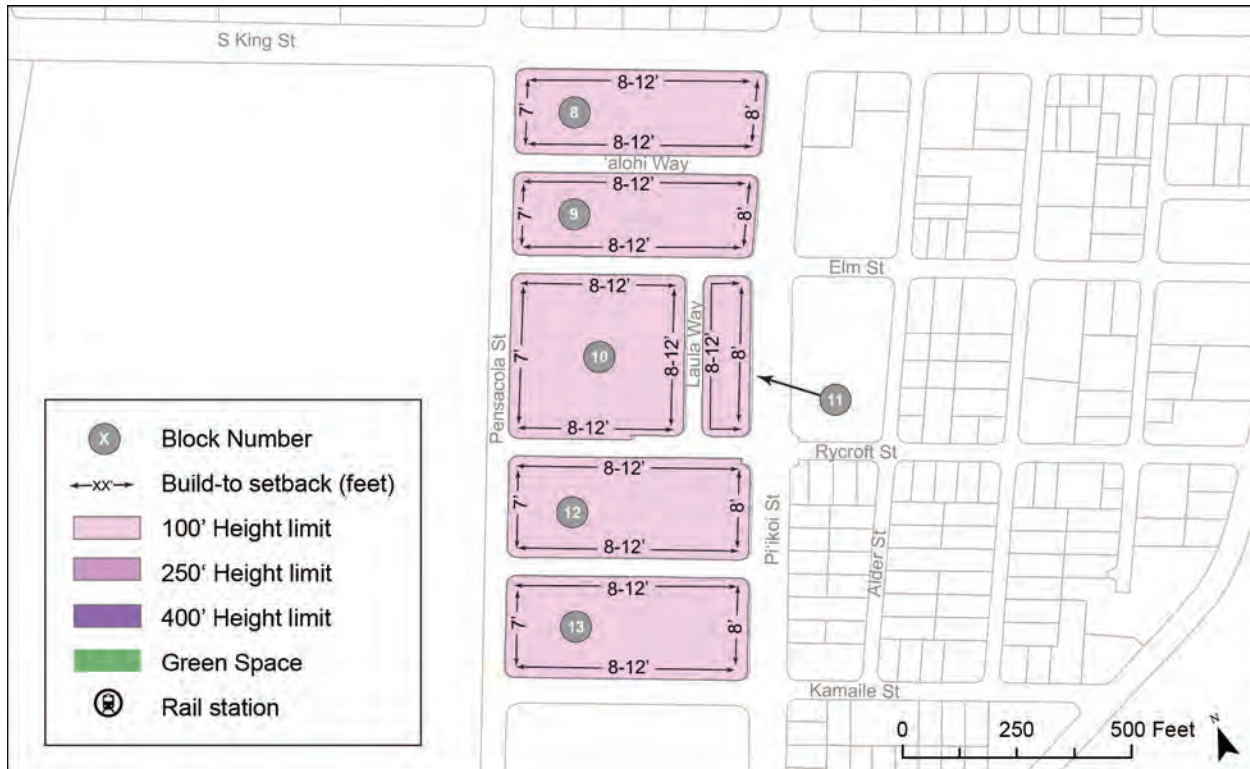
C. Building Placement	
Front Build-to line	7' to 15'
Frontage Occupancy at Build-to line	60% min.
Setback Side	0'
Setback Rear	0'

D. Building Form	
Maximum Height	400'
Street Front Element Height Range	30' to 65'
Maximum Density (FAR)	3.5

**Footnotes:**

- Raised Frontages are only allowed in Flood Zones to accommodate necessary flood elevation and shall not be used in other locations.
- Chinatown Shopfronts are allowed only on the thoroughfares indicated in Figure FT.6.
- Gallery and Arcades are permitted on Pensacola Street, Kapiolani Boulevard, King Street and new streets, as appropriate, only.
- Gallery and Arcades shall contain retail use.
- All buildings over 100 feet shall be subject to the Podum High Rise building standards.

**FIGURE NZ.4 SHERIDAN ZONE (SH)**



A. Building Types - Max Height	
Podium High Rise	-
Urban Block	65'
Lei Building	65'
Courtyard Building	45'
Duplex / Triplex / Quadplex	35'
Townhouse	35'
Flex / Loft	35'
Industrial Barn	-
Side Yard House	45'
Front Yard House	35'

B. Frontage Types	
Lanai and Front Yard	✓
Stoop	✓
Dooryard	✓
Forecourt	✓
Shopfront	✓
Chinatown Shopfront	✓*
Raised Shopfront	✓*
Raised Terrace Front	✓*
Terrace Front	✓
Gallery and Arcade	✓*
Kaka'ako Frontage	-

C. Building Placement	
Front Build-to line	7' to 12'
Frontage Occupancy at Build-to line	50% min.
Setback Side	3'
Setback Rear	3'

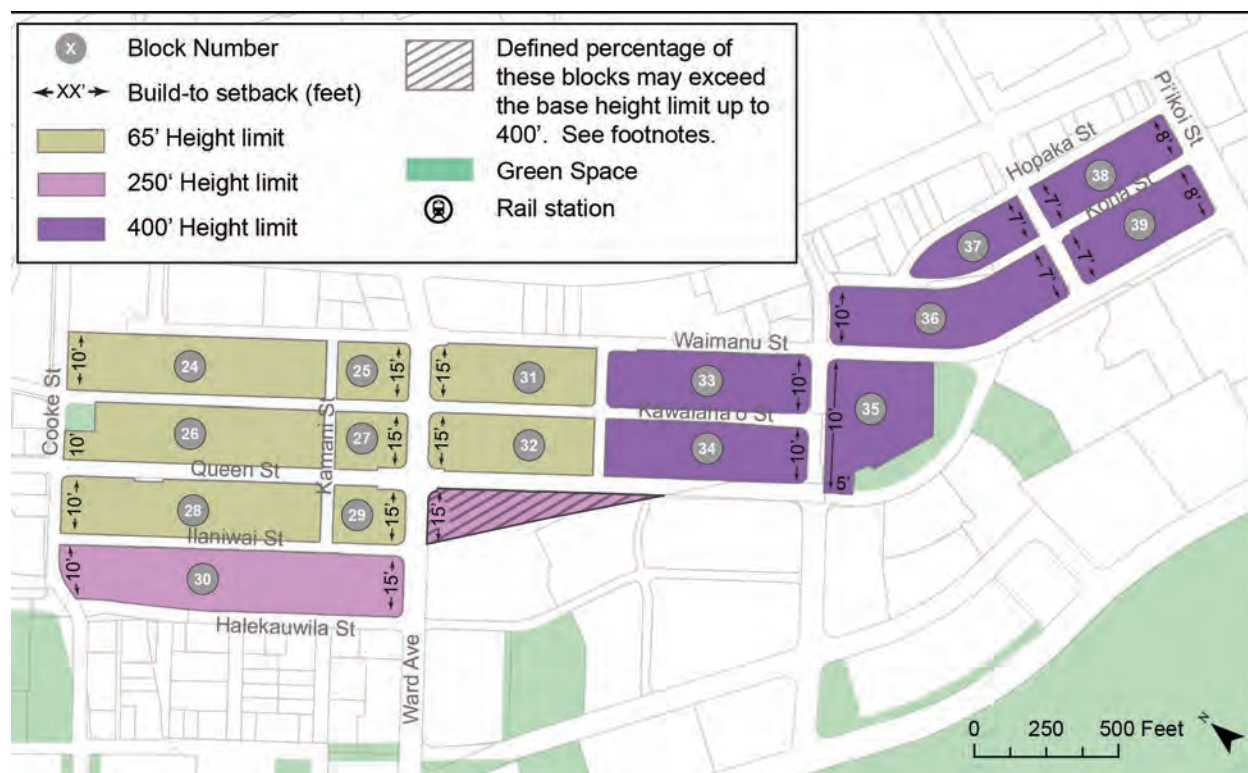
D. Building Form	
Maximum Height	65'
Street Front Element Height Range	15' to 65'
Maximum Density (FAR)	2.0

**Footnotes:**

- The Urban Block and Lei building types are permitted on Blocks 12 and 13 only.
- Raised Frontages are only allowed in Flood Zones to accommodate necessary flood elevation and shall not be used in other locations.
- Gallery and Arcades are only permitted on Pensacola Street.
- Gallery and Arcades shall contain retail use.
- Chinatown Shopfronts are only allowed on the thoroughfares indicated in Figure FT.6.
- Office uses shall be limited to home occupations.
- Retail uses shall be limited to corner stores and neighborhood-serving retail, which must be at block corners or along Piikoi Street, Pensacola Street, and King Street only.
- Civic uses shall be limited to neighborhood-scaled functions such as fire stations, meeting rooms, and churches.
- Civic uses shall be on lots no greater than 20,000 square feet.



**FIGURE NZ.5 CENTRAL KAKA'AKO ZONE (CK)**



A. Building Types - Max Height	
Podium High Rise	400'
Urban Block	100'
Lei Building	100'
Courtyard Building	55'
Duplex / Triplex / Quadplex	35'
Townhouse	35'
Flex / Loft	45'
Industrial Barn	35'
Side Yard House	-
Front Yard House	-

B. Frontage Types	
Lanai and Front Yard	-
Stoop	✓
Dooryard	✓
Forecourt	✓
Shopfront	✓
Chinatown Shopfront	✓*
Raised Shopfront	✓*
Raised Terrace Front	✓*
Terrace Front	✓
Gallery and Arcade	-
Kaka'ako Frontage	✓

C. Building Placement	
Front Build-to line	n/s to 15'
Frontage Occupancy at Build-to line	75% min.
Setback Side	0'
Setback Rear	0'

D. Building Form	
Maximum Height	400'
Street Front Element Height Range	20' to 65'
Maximum Density (FAR)	3.5

**Footnotes:**

- Raised Frontages are only allowed in Flood Zones to accommodate necessary flood elevation and shall not be used in other locations.
- Chinatown Shopfronts are only allowed on the thoroughfares indicated in Figure FT.6.
- Civic uses shall be limited to neighborhood-scaled functions such as fire stations, meeting rooms, and churches.
- Civic uses shall be on lots no greater than 20,000 square feet.
- All buildings over 100 feet shall be subject to the Podium High Rise building standards.

**FIGURE NZ.6 PAUHI ZONE (PA)**



A. Building Types - Max Height	
Podium High Rise	400'
Urban Block	100'
Lei Building	100'
Courtyard Building	65'
Duplex / Triplex / Quadplex	-
Townhouse	-
Flex / Loft	45'
Industrial Barn	30'
Side Yard House	-
Front Yard House	-

B. Frontage Types	
Lanai and Front Yard	-
Stoop	✓
Dooryard	✓
Forecourt	✓
Shopfront	✓
Chinatown Shopfront	✓*
Raised Shopfront	✓*
Raised Terrace Front	✓*
Terrace Front	✓
Gallery and Arcade	✓*
Kaka'ako Frontage	-

C. Building Placement	
Front Build-to line	n/s to 40'
Frontage Occupancy at Build-to line	60% min.
Setback Side	0'
Setback Rear	0'

D. Building Form	
Maximum Height	400'
Street Front Element Height Range	40' to 65'
Maximum Density (FAR)	3.5

**Footnotes:**

- The Industrial Barn building type is permitted on Block 48 only.
- Raised Frontages are only allowed in Flood Zones to accommodate necessary flood elevation and shall not be used in other locations.
- Chinatown Shopfronts are allowed only on the thoroughfares indicated in Figure FT.6.
- Gallery and Arcades are permitted on Ala Moana Boulevard, Auahi Street, Pohukaina Street, and Halekauwila Street only.
- Gallery and Arcades shall contain retail use only.
- Where build to lines are greater than 15 feet, a Terrace Front shall be used.
- Maximum height is as indicated and shown in Figure NZ.6-1 with the following allowances:
  - 15% of Blocks 53, 54, 44, 57, 58, 59, 60 and 61 can go up to 400 feet.
  - 20% of Block 56 can go up to 400 feet. The white dotted lines delineate Block 56 boundary.
  - These percentages for maximum height allowances are in addition to the existing buildings at the time of the adoption of the Mauka Area Rules.
- All buildings over 100 feet shall be subject to the Podum High Rise building standards.

**FIGURE NZ.7 AUAAHI ZONE (AU)**



A. Building Types - Max Height	
Podium High Rise	400'
Urban Block	100'
Lei Building	100'
Courtyard Building	65'
Duplex / Triplex / Quadplex	-
Townhouse	-
Flex / Loft	45'
Industrial Barn	35'
Side Yard House	-
Front Yard House	-

B. Frontage Types	
Lanai and Front Yard	-
Stoop	✓
Dooryard	✓
Forecourt	✓
Shopfront	✓
Chinatown Shopfront	✓*
Raised Shopfront	✓*
Raised Terrace Front	✓*
Terrace Front	✓
Gallery and Arcade	✓*
Kaka'ako Frontage	-

C. Building Placement	
Front Build-to line	n/s to 15'
Frontage Occupancy at Build-to line	75% min.
Setback Side	0'
Setback Rear	0'

D. Building Form	
Maximum Height	400'
Street Front Element Height Range	40' to 65'
Maximum Density (FAR)	3.5

**Footnotes:**

- Raised Frontages are only allowed in Flood Zones to accommodate necessary flood elevation and shall not be used in other locations.
- Chinatown Shopfronts are allowed only on the thoroughfares indicated in Figure FT.6.
- Gallery and Arcades are permitted on Ala Moana Boulevard and Auahi Street only.
- Gallery and Arcades shall contain retail use only.
- Maximum height is as indicated and shown in Figure NZ.7-1 with the following allowances:
  - ◊ 5% of Block 62 can go up to 400 feet.
  - ◊ 5% of Block 63 can go up to 400 feet.
  - ◊ 10% of Block 64 can go up to 400 feet.
  - ◊ 15% of Block 65 can go up to 400 feet.
  - ◊ These percentages for maximum height allowances are in addition to the existing buildings at the time of the adoption of the Mauka Area Rules.
- All buildings over 100 feet shall be subject to the Podium High Rise building standards.

Legend	
✓	Permitted
✓*	Permitted with exceptions
-	Not Permitted



## FIGURE BT.1 FRONT YARD HOUSE

### A. Lot Width

1. Maximum of 65 feet.

### B. Pedestrian Access

1. The principal entrance to the principal building shall be directly from the street, through the front yard.
2. The principal entrance to the accessory dwelling shall be accessible directly from a frontage line, through the side yard setback of the principal building or from an alley.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B).
2. Garages may accommodate no more than two (2) cars.
3. Parking access shall be as per Section 15-217-63, Parking and Loading.

### D. Open Space

1. Open Space shall be located behind the principal building with an area no less than 15% of the lot. Open space shall maintain a minimum 20 foot dimension on anyone side.
2. Open space shall be located at grade at the rear or side of the lot, on patios or decks, a roof garden and/or balconies.

### E. Landscape

1. Where front yards have a 20 foot build to line, one 25-gallon minimum size canopy tree shall be planted per 40 lineal feet of frontage line or fraction thereof.
2. Trees shall be a single species to match the species of street trees in the furnishing zone.
3. Four five-gallon shrubs, six one-gallon shrubs and turf or acceptable native or dry climate ground cover is required for every required tree.

### F. Frontage

1. Permissible Frontage Types are: Lanai and Front Yard, Stoop and Dooryard.

### G. Building Massing for Principal Building

1. Principal buildings shall be composed of one and/or two stories.
2. Allowable floor plate sizes for the principal building are shown in Table BT.1-1.

### H. Building Massing for Accessory Dwelling

1. Accessory dwellings located above garages shall be limited to one story above the garage with a 12' maximum floor to floor height.
2. Accessory dwellings located at grade shall be limited to one story with 12' maximum floor to floor height.
3. Accessory dwellings shall have a maximum floor area of 750 square feet.
4. Accessory dwellings shall not exceed 50% of the principal building's floor area.
5. Allowable floor plate sizes for the accessory building are shown in Table BT.1-2.

\* Note: Accessory dwelling units are only permitted in Thomas Square, Sheridan, and Central Kaka'ako Zones.

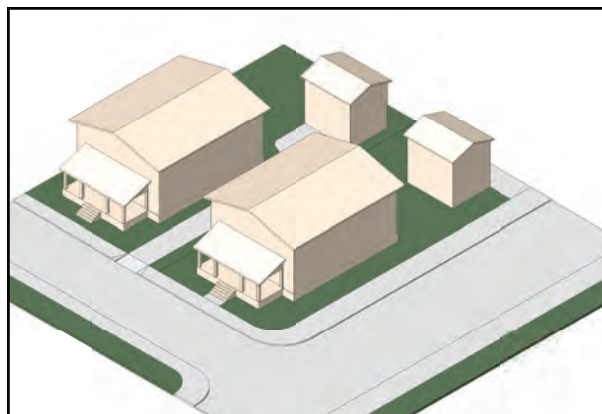


Figure BT.1-1 Axonometric View, Front Yard House (Illustrative)

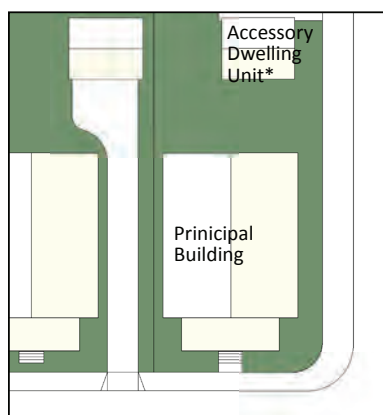


Figure BT.1-2 Plan View, Front Yard House (Illustrative)

Table BT.1-1 Allowable Floor Plate Size, Front Yard House - Principal Building

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)	
	1st Floor	2nd Floor
1	100%	-
2	100%	100%

Table BT.1-2 Allowable Floor Plate Size, Front Yard House - Accessory Dwelling Unit

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)	
	1st Floor	2nd Floor (above Garage)
1	100%	-
2	100%	100%

## FIGURE BT.2 SIDE YARD HOUSE

### A. Lot Width

1. Maximum of 65 feet.

### B. Pedestrian Access

1. The entrance shall be directly from the street, through the side yard, along the elevation facing the side lot line.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B).
2. Garages may accommodate no more than two (2) cars.
3. Parking access shall be as per Section 15-217-63, Parking and Loading.
4. If driveway is along the side yard, the driveway should have a permeable surface, such as pavers.

### D. Open Space

1. Open space shall be located along the side yard with an area of no less than 15% of the lot. The open space shall maintain a minimum 20 foot dimension and be enclosed by a wall or hedge of no more than three feet in height.

### E. Landscape

1. One 25-gallon minimum tree shall be planted per 40 lineal feet of side yard lot line or fraction thereof.
2. Four five-gallon size shrubs, six one-gallon size shrubs and turf or acceptable native or dry climate ground cover is required for every required tree.

### F. Frontage

1. Building facades shall have a minimum fenestration of 15% in order to prevent blank walls facing the street.

### G. Building Massing

1. Allowable maximum floor plate sizes are shown in Table BT.2-1.

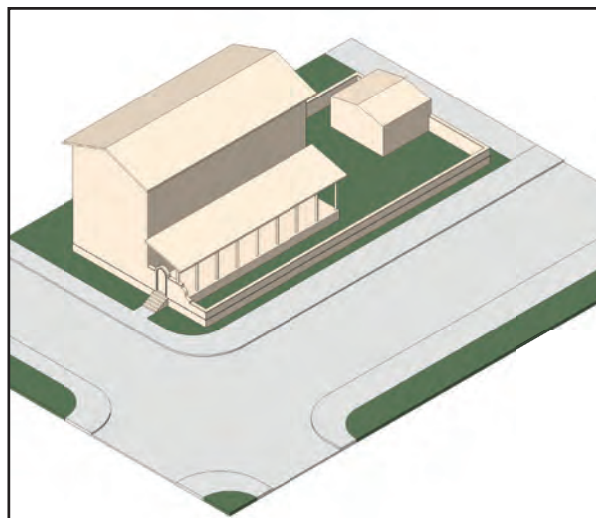


Figure BT.2-1 Axonometric View, Side Yard House (Illustrative)

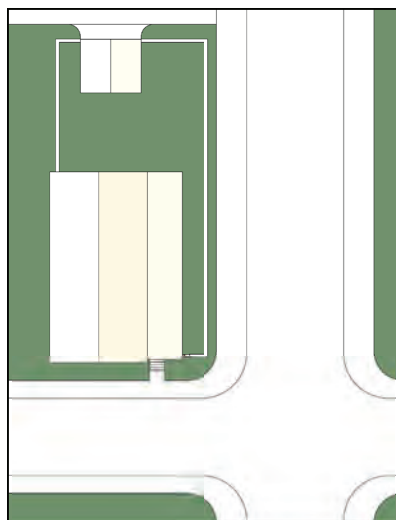


Figure BT.2-2 Plan View, Side Yard House (Illustrative)

Table BT.2-1 Allowable Floor Plate Size, Side Yard House

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)		
	1st Floor	2nd Floor	3rd Floor
1	100%	-	
2	100%	100%	
3	100%	100%	100%



## FIGURE BT.3 TOWNHOUSE

### A. Facade Width

1. Maximum of 26 feet for each Townhouse, except that the Facade of a Townhouse on block corners may be up to 40 feet.
2. The maximum number of attached Townhouses allowed is 6 townhouses per string, except for the Thomas Square and Central Kakaako Zones which allow up to 10 attached Townhouses per string (each a "Facade String.")

### B. Pedestrian Access

1. The entrance shall be accessible from the street, through the Frontage Line.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B).
2. Garages shall accommodate no more than two (2) cars, be integrated into the back of the Townhouse, and have garage doors of only one (1) car width.
3. Parking access shall be as per 15-217-64.

### D. Open Space

1. At least 15% of the Lot area shall be provided as Open Space.
2. The Open Space shall be located at-grade at the rear or side of the building, on patios or decks, and/or on a roof garden.
3. Private patios and balconies are allowed in any yard.

### E. Landscape

1. Four (4), five-gallon size shrubs, six (6) one-gallon size shrubs and turf or acceptable native or dry climate ground cover is required for every required tree.

### F. Frontage

1. Permissible Frontage Types are: Dooryard, Stoop, and Terrace Front.

### G. Building Massing

1. In a 3-Story building, a 2-Story Townhouse can be stacked over a separate ground floor dwelling.
2. Allowable floor plate sizes are shown in Table BT.3-1.

Table BT.3-1 Allowable Floor Plate Size, Townhouse

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)		
	1st Floor	2nd Floor	3rd Floor
1	100%	-	
2	100%	100%	
3	100%	100%	85%

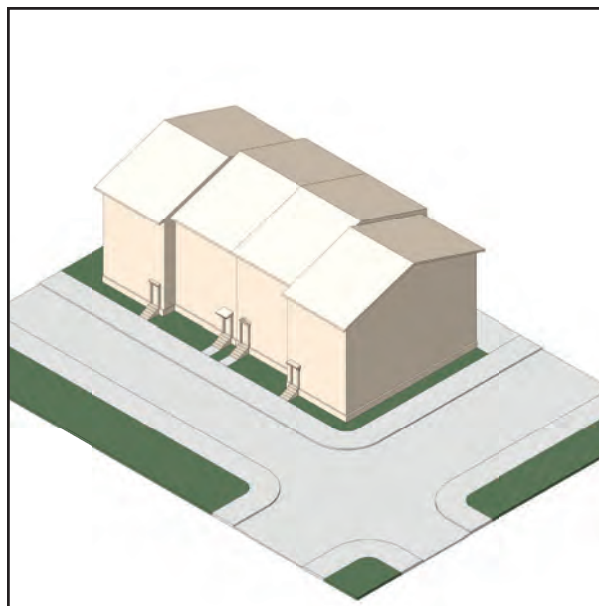


Figure BT.3-1 Axonometric View, Townhouse (Illustrative)



Figure BT.3-2 Plan View, Townhouse (Illustrative)

## FIGURE BT.4 DUPLEX, TRIPLEX, QUADPLEX

### A. Lot Width

1. Maximum of 65 feet for a Duplex.
2. Maximum of 100 feet for a Triplex or Quadplex.

### B. Pedestrian Access

1. The entrance shall be directly accessible from the street, through the Frontage Line.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B).
2. Garages shall accommodate no more than two (2) cars, be integrated into the back of the Townhouse, and have garage doors of only one (1) car width.
3. Parking access shall be as per 15-217-64.

### E. Open Space

1. Each ground floor unit shall have at least 150 SF of private or semi-private Yard space in the rear yard, side yard, or integrated into the building area through courtyards and gardens.
2. Units above the ground floor may have access to roof garden space for passive and active recreation, patios, decks, and courtyards.
3. Rear yards shall be no less than 15% of the area of each Lot and of a square or rectangular geometry.

### F. Landscape

1. When front yards have a 20' Build to Line, a minimum of one (1) 25-gallon canopy tree shall be planted per 40 lineal feet of Frontage Line or fraction thereof. Trees shall be a single species to match the species of street trees in the Furnishing Area.
2. Four (4), five-gallon size shrubs, six (6) one-gallon size shrubs and turf or acceptable native or dry climate ground cover is required for every required tree.

### G. Frontage

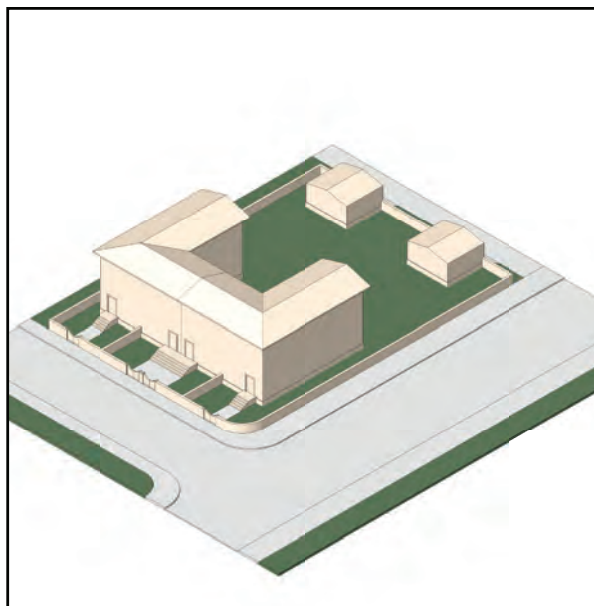
1. Permissible Frontage Types are: Lanai and Front Yard, Dooryard, Stoop, Forecourt, and Terrace Front.

### H. Building Massing

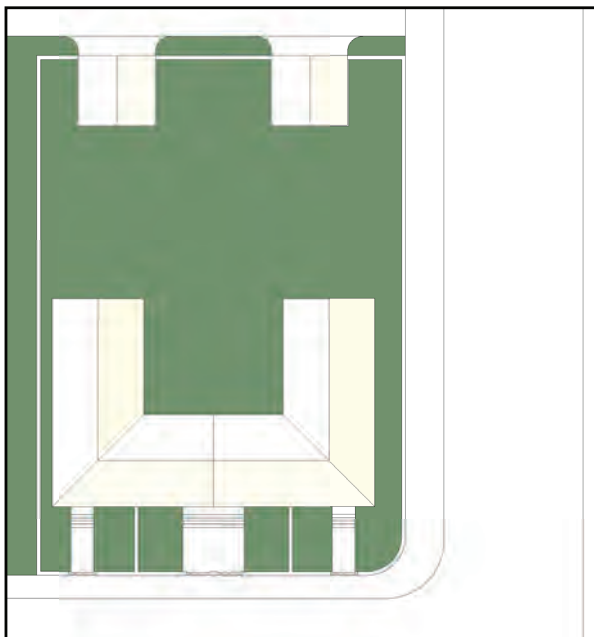
1. Front Facades shall have at least one Encroaching Element, such as a Lanai or balcony, or Plane Break occupying at least 15% of the Facade.
2. Allowable floor plate sizes are shown in Table BT.4-1.

**Table BT.4-1 Allowable Floor Plate Size, Duplex, Triplex, Quadplex**

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)			
	1st Floor	2nd Floor	3rd Floor	4th Floor
1	100%	-	-	-
2	100%	100%	-	-
3	100%	100%	85%	-
4	100%	100%	80%	75%



**Figure BT.4-1 Axonometric View, Duplex, Triplex, Quadplex (Illustrative)**



**Figure BT.4-2 Plan View, Duplex, Triplex, Quadplex (Illustrative)**

## FIGURE BT.5 FLEX-LOFT

### A. Facade Width

1. Maximum of 30' for each Flex-Loft.
2. The maximum number of attached Flex-Loft buildings is: 10 for Civic Center Zone, four (4) for Sheridan Zone, 10 for Central Kakaako Zone, 10 for Pauahi Zone, and 10 for Auahi Zone.

### B. Pedestrian Access

1. The entrance shall be accessible directly from the street, through the Frontage Line.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B).
2. Garages shall accommodate no more than two (2) cars and have garage doors of only one (1) car width.
3. Parking access shall be as per 15-217-64.

### E. Open Space

1. At least 15% of the Lot area shall be provided as Open Space.
2. The Open Space shall be located at-grade at the rear or side of the building, on patios or decks, and/or on a roof garden.
3. The Open Space area must be open to the sky.

### F. Landscape

1. Landscape shall not obscure front yards on adjacent lots or the shopfront of the ground floor Industrial space.
2. Trees shall be planted at the rate of one (1) 36-inch box tree per 25 lineal feet of front yard or fraction thereof.
3. Trees shall be a single species to match the species of street trees in the Furnishing Area.
4. At least one (1) 25-gallon minimum size canopy tree shall be provided in the rear yard for shade and privacy.
5. Side Yards trees shall be placed a rate of one (1) 25-gallon minimum size tree per 30 lineal feet or fraction thereof to protect the privacy of neighbors. These trees can be placed in groups in order to achieve a particular design.
6. Six (6), five-gallon size shrubs, 10 one-gallon size shrubs and turf or acceptable native or dry climate ground cover is required for every required tree.

### G. Frontage

1. Permissible Frontage Types are: Shopfront, Chinatown Shopfront, Raised Shopfront (when necessary for flood protection), Gallery/Arcade, Dooryard, Stoop, Kakaako Frontage, and Terrace Front.

### F. Building Massing

1. Facades shall have at least one (1) Encroaching Element, such as a Lanai or balcony, or Plane Break occupying at least 15% of the Facade.
2. Building elevations abutting Side Yards shall provide at least one (1) horizontal Plane Break of at least three (3) feet, and one (1) vertical break of at least two (2) feet.
3. Allowable floor plate sizes are shown in Table BT.5-1.



Figure BT.5-1 Axonometric View, Flex-Loft (Illustrative)

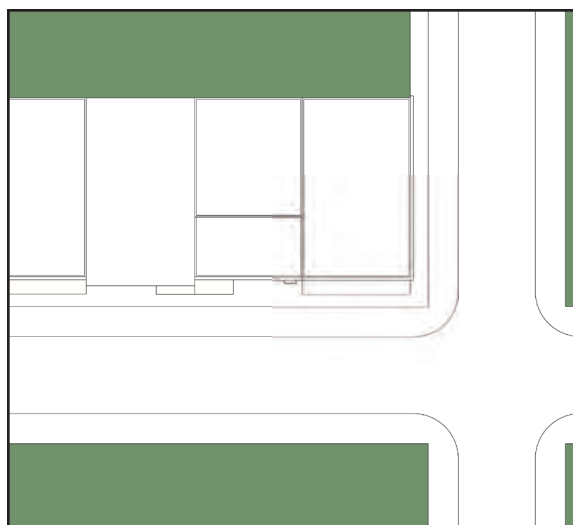


Figure BT.5-2 Plan View, Flex-Loft (Illustrative)

Table BT.5-1 Allowable Floor Plate Size, Flex-Loft

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)			
	1st Floor	2nd Floor	3rd Floor	4th Floor
1	100%	-	-	-
2	100%	100%	-	-
3	100%	100%	85%	-
4	100%	100%	85%	85%

## FIGURE BT.6 INDUSTRIAL BARN

### A. Facade Width

1. Maximum of 100 feet.

### B. Pedestrian Access

1. The entrance shall be accessible from the street, through the Frontage Line.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B).
2. Garages shall accommodate no more than two (2) cars and have garage doors of only one (1) car width.
3. Parking access shall be as per 15-217-64.

### E. Open Space

1. At least 15% of the Lot area shall be provided as Open Space.
2. The Open Space shall be located at-grade at the rear or side of the building and/or on a roof garden.
3. The Open Space must be open to the sky.
4. Permeably-paved parking areas can count towards the Open Space requirement for this Building Type.

### F. Landscape

1. Landscape shall not obscure front yards on adjacent lots or the shopfront of the ground floor industrial space
2. When front yards have a 20' Build to Line, then front yard trees shall be provided.
4. Trees shall be a single species to match the species of street trees in the Furnishing Area.
3. Trees shall be planted at the rate of one (1) 25-gallon minimum size canopy 25 lineal feet of front yard or fraction thereof.
5. At least one (1) 25-gallon minimum size canopy tree shall be provided in the rear yard if present, for shade and privacy. (Central Kakaako Zone, exempt).
6. Side yard trees shall be placed a rate of one (1) 25-gallon minimum size tree per 30 lineal feet to protect the privacy of neighbors. These trees can be placed in groups in order to achieve a particular design. (Central Kakaako Zone, exempt).
7. Six (6), five-gallon size shrubs, ten (10) one-gallon size shrubs and turf, or acceptable native or dry climate ground cover is required for every required tree. (Central Kakaako Zone, exempt).
8. On-site paving is limited to the driveway, turnaround/backup area and any required parking spaces.

### G. Frontage

1. Permissible Frontage Types are: Shopfront, Chinatown Shopfront, Raised Shopfront (as necessary for flood protection), Forecourt, Gallery/Arcade, Kakaako Frontage, and Terrace Front.

### F. Building Massing

1. Allowable floor plate sizes are shown in Table BT.6-1.

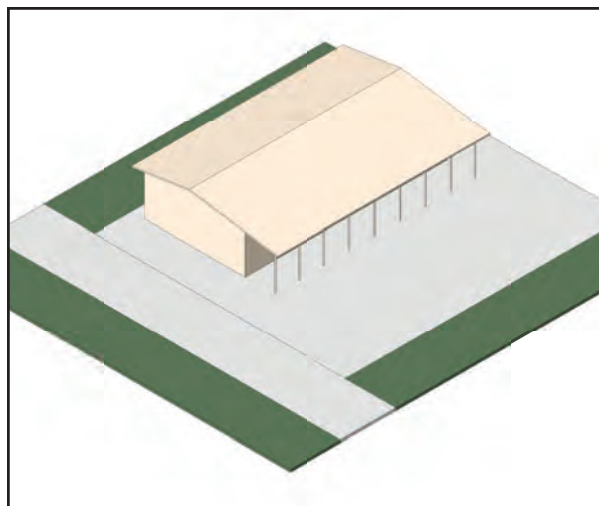


Figure BT.6-1 Axonometric View, Industrial Barn (Illustrative)

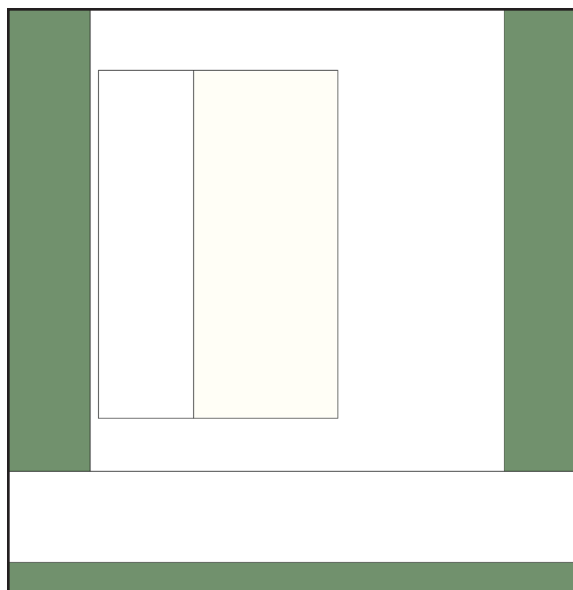


Figure BT.6-2 Plan View, Industrial Barn (Illustrative)

Table BT.6-1 Allowable Floor Plate Size, Industrial Barn

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)	
	1st Floor	2nd Floor
1	100%	-
2	100%	100%

## FIGURE BT.7 COURTYARD

### A. Lot Width

1. Maximum of 300 feet.

### B. Pedestrian Access

1. Ground floor courtyard(s) shall be accessible from the street, through the Frontage Line, to a Passageway open to the sky or covered.
2. Raised courtyards shall be accessed through a lobby, accessed directly from the Principle Frontage.
3. The Principle Entrance to each ground floor unit at the Principle Frontage shall be directly from the Frontage Line, or from a courtyard.
4. Access to units above ground floor courtyards shall be through open or roofed stairs. To the extent that units above the ground floor are accessed by stairs, such stairs shall not serve more than three (3) units.
5. Access to units above Raised Courtyards shall be through a lobby with direct access to each courtyard. Upper floor exterior corridors are limited to 25' in length. Longer corridors shall be enclosed.
6. All retail spaces should be accessed from a ground floor, single-tenant entry along a Street, courtyard, or Passageway.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B) at grade or up to two-stories (20') above grade.
2. Parking access shall be as per 15-217-64.
3. If accommodated in an above-ground garage, parking shall be concealed from view at the Public Frontage through a liner of Habitable Space.

### E. Open Space

1. At least 15% of the Lot area shall be provided as Open Space in the form of one (1) or more courtyards open to the sky.
2. The courtyard(s) may be located at-grade or on a podium, or combination thereof.
3. The minimum courtyard dimension shall be 30 feet on any one side, not counting any porch space or other Encroachment or projection provided within the courtyard.
4. Projections and Encroachments into the Open Space are permitted on all sides, provided that the minimum 30 foot dimension is maintained.

### F. Landscape

1. When there is a 20' Build to Line, one (1) 25-gallon minimum size canopy tree shall be planted per 25 lineal feet of Frontage Line or fraction thereof.
2. Trees shall be a single species to match the species of street trees in the Furnishing Area.
3. Side yard trees shall be placed at a rate of one (1) 25-gallon minimum size canopy tree per 30 lineal feet or fraction thereof. Side yard trees can be placed in groups in order to achieve a particular design.
4. One field stock specimen tree is required per courtyard, and maybe in containers above garage if required.
4. Six (6), five-gallon size shrubs, 10 one-gallon size herbaceous perennials/shrubs and turf or acceptable native or adapted ground cover is required for every required tree.

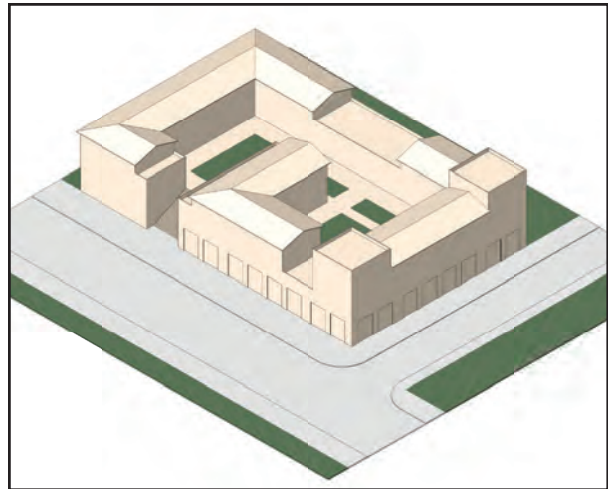


Figure BT.7-1 Axonometric View, Courtyard (Illustrative)

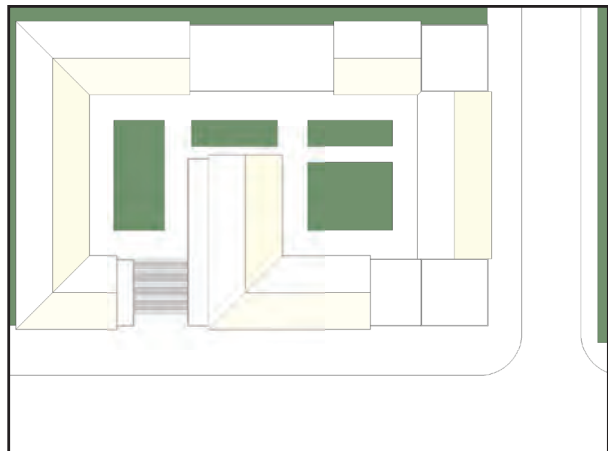


Figure BT.7-2 Plan View, Courtyard (Illustrative)

### G. Frontage

1. Permissible Frontage Types are: Forecourt, Gallery/ Arcade, Shopfront, Chinatown Shopfront, Raised Shopfront (as necessary for flood protection), Stoop, Dooryard, Kakaako Frontage, and Terrace Front.

### H. Building Massing

1. Allowable floor plate sizes are shown in Table BT.7-1.

Table BT.5-1 Allowable Floor Plate Size, Flex-Loft

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)				
	1st Floor	2nd Floor	3rd Floor	4th Floor	5th Floor
1	100%	-	-	-	-
2	100%	100%	-	-	-
3	100%	100%	65%	-	-
4	100%	100%	55%	55%	-
5	100%	100%	55%	55%	40%



## FIGURE BT.8 URBAN BLOCK

### A. Lot Width

1. Maximum of 300 feet.

### B. Pedestrian Access

1. Entrances to upper floors shall be accessed through an interior lobby, which is accessed directly from the street.
2. On Promenade Streets, the Principle Entrance to each ground floor space shall be directly from the street and occur a maximum interval of 60 feet. On all other thoroughfares, access to ground floor podium spaces may occur at this interval or may be through the street level lobby provided.
4. All retail spaces should be accessed from a ground floor, single-tenant entry along a street, Courtyard, or Passageway.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B) for the first 21 feet of height.
2. Parking access shall be as per 15-217-64.
3. If accommodated in an above-ground garage, parking shall be concealed from view at the Public Frontage through a liner of Habitable Space for at least the first 21 feet of building height.
4. Above-ground garages above 21 feet shall be screened from view at the Public Frontage by landscaping, green screens, or cladding, or concealed from view through a liner of Habitable Space.

### E. Open Space

1. At least 15% of the Lot area shall be provided as Open Space and shall be open to the sky.
2. The Open Space may be located at-grade, on a podium, roof garden, or combination thereof.
3. Each Open Space shall have a minimum dimensions of 40 feet on any one side.
4. Projections into the Open Space are permitted on all sides of the space, provided that the 40 foot minimum dimension is maintained.



Figure BT.8-1 Axonometric View, Urban Block (Illustrative)

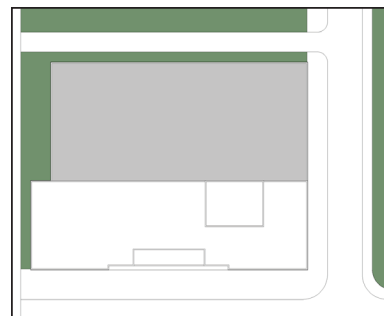


Figure BT.8-2 Plan View, Urban Block (Illustrative)

Table BT.8-1 Allowable Floor Plate Size, Urban Block

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)					
	Floors 1-3	4th Floor	5th Floor	6th Floor	Floors 7-8	Floor 9 & Above
1-3	100%	-	-	-	-	-
4-5	100%	100%	75%	-	-	-
6	100%	100%	65%*		-	-
7	100%	100%	60%*			-
8	100%	100%	58%*			-
9+	100%	100%	53%*			

\*Average maximum floor plate ratio for 5th floor and above

### F. Landscape

1. When front yards have a 20' Build to Line, a minimum of one (1) field stock canopy tree shall be planted per 40 lineal feet of Frontage Line or fraction thereof. front yard trees shall be a single species to match the species of street trees in the Furnishing Area.
2. When side yards are present, one (1) 25-gallon minimum size canopy tree shall be planted per 30 lineal feet to protect privacy of neighbors. The trees can be placed in groups in order to achieve a particular design.
3. Six (6), five-gallon size shrubs, 10 one-gallon size shrubs and turf or acceptable native or dry climate ground cover is required for every required tree.

### G. Frontage

1. Permissible Frontage Types are: Forecourt, Gallery/Arcade, Shopfront, Chinatown Shopfront, Raised Shopfront as necessary for flood protection, Stoop, Dooryard, and Terrace Front.

### H. Building Massing

1. Front Facades shall have at least one (1) Encroaching Element, such as porches or balconies, or Plane Break that cumulatively occupy at least 10% of the Facade.
2. Allowable floor plate sizes are shown in Table BT.8-1.

## FIGURE BT.9 LEI BUILDING

### A. Lot Width

1. Maximum of 300 feet.

### B. Pedestrian Access

1. Entrances to upper floors shall be accessed through an interior lobby, accessed directly from the street.
2. On Promenade Streets, the entrance to each ground floor space shall be directly from the street and occur a maximum interval of 60 feet. On all other streets, access to ground floor podium spaces may occur at this interval or may be through the street level lobby provided.
3. Circulation to all spaces above the ground level shall be through an interior corridor or lobby. Corridors may be on the building exterior in the back of the building only, if there is at least 15 feet of separation between the garage and habitable building.
4. All retail spaces should be accessed from a ground floor, single-tenant entry along a street, courtyard, or Passageway.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B) for the first 21 feet of height.
2. Parking access shall be as per 15-217-64.
3. If accommodated in an above-ground garage, parking shall be concealed from view at the Public Frontage through a liner of Habitable Space, for at least three sides of the building. Where exposed to the street, above-ground garages shall be screened from view at the Public Frontage by landscaping, green screens, or cladding.

### D. Open Space

1. At least 15% of the Lot area shall be provided as Open Space and shall be open to the sky.
2. The Open Space may be located at-grade, on a podium, roof garden, or combination thereof.
3. Each Open Space shall have a minimum dimension of 30 feet on any one side.
4. Projections into the Open Space are permitted on all sides of the space, provided that the 30 foot minimum dimension is maintained.

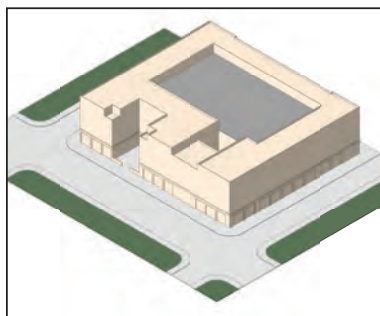


Figure BT.9-1 Axonometric View, Lei Building (Illustrative)

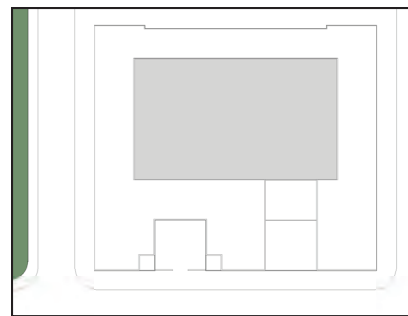


Figure BT.9-2 Plan View, Lei Building (Illustrative)

Table BT.9-1 Allowable Floor Plate Size, Lei Building

Building Height (No. of Floors)	Allowed Floor Plate Size (% Ratio)					
	Floors 1-3	4th Floor	5th Floor	6th Floor	Floors 7-8	Floor 9 & Above
1-3	100%	-	-	-	-	-
4-5	100%	100%	75%	-	-	-
6	100%	100%	65%*		-	-
7	100%	100%	60%*			-
8	100%	100%	58%*			-
9+	100%	100%	53%*			

\*Average maximum floor plate ratio for 5th floor and above

### E. Landscape

1. When front yards have a 20' Build to Line, a minimum of one (1) field stock canopy tree shall be planted per 40 lineal feet of Frontage Line or fraction thereof. Front yard trees shall be a single species to match the species of street trees in the Furnishing Zone.
2. When side yards are present, one (1) 25-gallon minimum size canopy tree per 30 lineal feet to protect privacy of neighbors. The trees can be placed in groups in order to achieve a particular design.
3. Six (6), five-gallon size shrubs, 10 one-gallon size shrubs and turf or acceptable native or dry climate ground cover is required for every required tree.

### F. Frontage

1. Permissible Frontage Types are: Forecourt, Gallery/Arcade, Shopfront, Chinatown Shopfront, Raised Shopfront as necessary for flood protection, Stoop, Dooryard by exception, and Terrace Front.

### G. Building Massing

1. Front Facades shall have at least one (1) Encroaching Element, such as porches or balconies, or Plane Break that cumulatively occupy at least 10% of the Facade.
2. Allowable floor plate sizes are shown in Table BT.9-1.

## FIGURE BT.10 PODIUM HIGH-RISE

All buildings over 100 feet shall be subject to Podium High Rise Building Standards.

### A. Lot Width

1. Maximum of 300 feet.

### B. Pedestrian Access

1. Entrances to upper floors shall be accessed through an interior lobby, accessed directly from the street.
2. On Promenade Streets, the entrance to each ground floor space shall be directly from the street and occur a maximum interval of 60 feet. On all other streets, access to ground floor podium spaces may occur at this interval or may be through the street level lobby provided.
3. Circulation to all spaces above the ground level shall be through an interior corridor or lobby.
4. All retail spaces should be accessed from a ground floor, single-tenant entry along a street, courtyard, or Passageway.

### C. Parking Design and Location

1. Parking shall be located in the Allowed Parking Zone (Figure 1.10-B) for the first 21 feet of height.
2. Parking access shall be as per 15-217-64.
3. If accommodated in an above-ground garage, parking shall be concealed from view at the Public Frontage through a liner of Habitable Space, for at least three sides of the building. Where exosed to the street, above-ground garages shall be screened from view at the Public Frontage by landscaping, green screens, or cladding.

### D. Open Space

1. At least 15% of the Lot area shall be provided as Open Space and shall be open to the sky.
2. The Open Space may be located at-grade, on a podium, roof garden, or combination thereof.
3. Each Open Space shall have a minimum dimension of 40 feet on any one side.
4. Projections into the Open Space are permitted on all sides of the space, provided that the 40 foot minimum dimension is maintained.

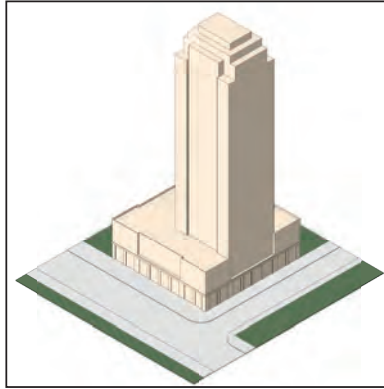


Figure BT.10-1 Axonometric View, Podium High Rise (Illustrative)

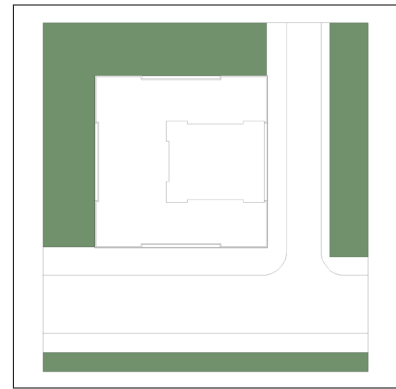


Figure BT.9-2 Plan View, Podium High Rise (Illustrative)

Table BT.10-1: Tower Floor Plate Size. Podium High Rise

Actual Development Lot Size	Allowable Tower Floor Plate
< 40,000 sq. ft.	8,000 sq. ft.
40,000 sq. ft. - 80,000 sq. ft.	8,000 sq. ft. - 10,000 sq. ft.
80,000 sq. ft. - 120,000 sq. ft.	10,000 sq. ft. - 12,000 sq. ft.
120,000 sq. ft. - 160,000 sq. ft.	12,000 sq. ft. - 16,000 sq. ft.
> 160,000 sq. ft.	16,000 sq. ft.

### E. Landscape

1. When front yards have a 20' Build to Line, a minimum of one (1) field stock canopy tree shall be planted per 40 lineal feet of Frontage Line or fraction thereof. Front yard trees shall be a single species to match the species of street trees in the Furnishing Zone.
2. When side yards are present, one (1) 25-gallon minimum size canopy tree shall be planted per 30 lineal feet to protect privacy of neighbors. The trees can be placed in groups in order to achieve a particular design.
3. Six, five-gallon size shrubs, ten one-gallon size shrubs and turf or acceptable native or dry climate ground cover is required for every required tree.

### F. Frontage

1. Permissible Frontage Types are: Forecourt, Gallery/ Arcade, Shopfront, Chinatown Shopfront, Raised Shopfront as necessary for flood protection, Stoop, Dooryard by exception, and Terrace Front.

### G. Building Massing

1. See Section §15-217-55(I), View Preservation, for important standards regarding view preservation and tower placement.
2. At least 65% of one edge of the tower must be flush with a facade of the building / street front element, except in the following cases:
  - (A) Where the tower is directly adjacent to two View Corridor Streets; and/or
  - (B) Where conformance with View Preservation Standards (15-217-55 (I)) make this rule impossible to achieve.
3. Allowable floor plate sizes are shown in Table BT.10-1.



## FIGURE BT.11 TROPICAL URBAN COURT

### A. Pedestrian Access

1. Circulation to all upper floors shall be through an exterior corridor, lobby or courtyard.
2. All retail spaces should be accessed from a ground floor, single-tenant entry along a street, courtyard, or passageway.

### B. Parking Design and Location

1. Where provided, parking shall be located in the third layer (See Figure 1.9).
2. Parking access shall be as per Section 15-217-64, Parking and Loading.

### C. Open Space

1. At least 20% of the lot area shall be provided as open space. One third of this requirement shall be provided at grade.
2. Open space shall have a minimum dimension of 30 feet on any one side.
3. Projections into the open space are permitted on all sides of the space, provided that the 30-foot minimum dimension is maintained.

### D. Frontage

1. Permissible frontage types are: Common Yard, Porch and Fence, Terrace, Stoop, Shopfront, Gallery, and Arcade.

### E. Building Massing

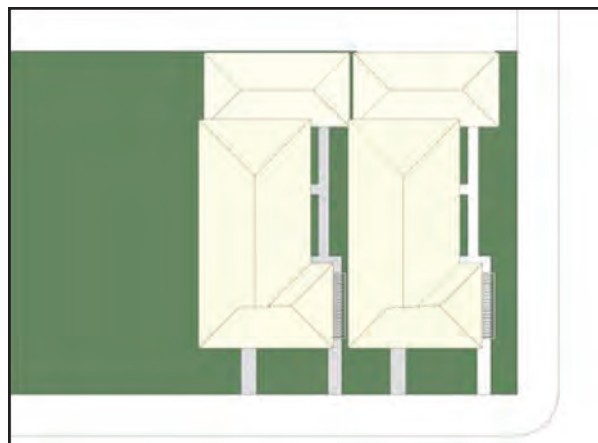
1. Front facades shall have at least one encroaching element, such as porches, balconies, or a plane break that cumulatively occupy at least 10% of the facade.
2. Allowable floor plate sizes are shown in Table BT.11-1.

**Table BT.11-1 Allowable Floor Plate Size, Tropical Urban Court**

No. of Stories	Allowed Floor Plate Size (% Ratio)	
	1st Story	2nd Story
1	100%	-
2	100%	100%



**Figure BT.11-1 Axonometric View, Tropical Urban Court (Illustrative)**



**Figure BT.11-2 Plan View, Tropical Urban Court (Illustrative)**

## FIGURE FT.1 LANAI AND YARD FRONTAGE

### A. Lanai Dimensions

1. Depth shall be a minimum of six (6) feet as measured from the Facade.
2. Width shall be a minimum of 10 feet.
3. Height shall be a minimum of 10 feet and a maximum eave height of 14 feet from the Lanai floor to the ceiling of the overhang.
4. The finished floor of the Lanai may be at-grade or raised a maximum of three (3) feet.

### B. Frontage Elements

1. Fences or walls defining and/or retaining the front yard shall not exceed three (3) feet in height from the adjacent sidewalk.

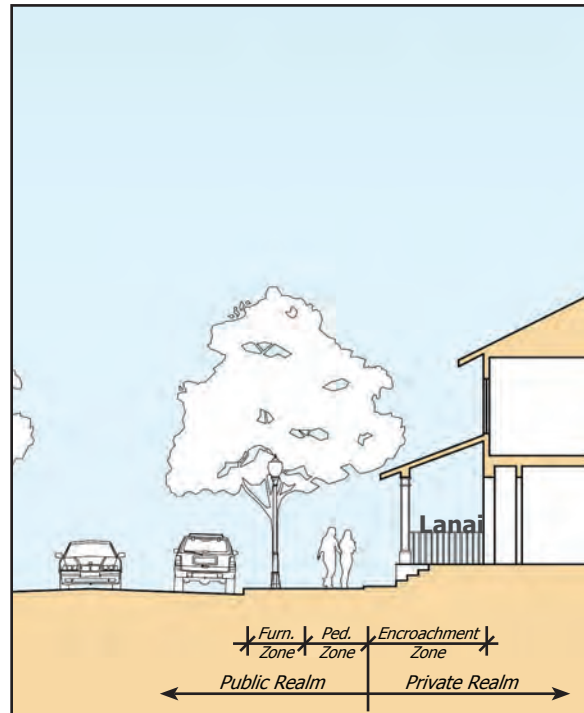


Figure FT.1-1 Cross Section, Lanai and Yard Frontage (Illustrative)

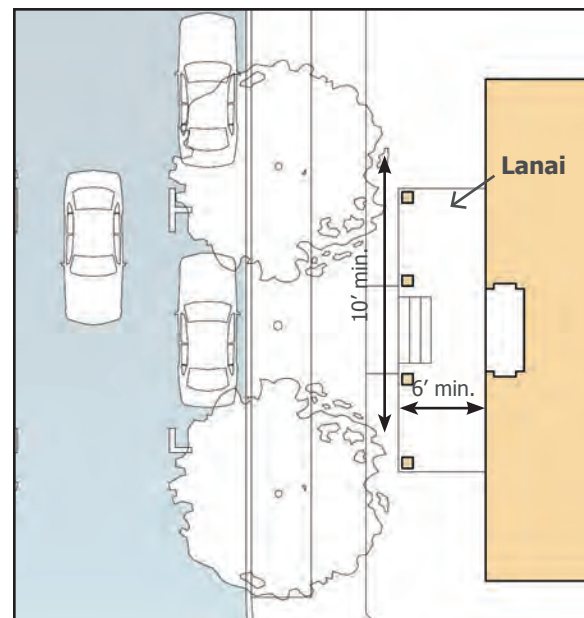


Figure FT.1-2 Plan View, Lanai and Yard Frontage (Illustrative)

## FIGURE FT.2 STOOP FRONTAGE

### A. Stoop Dimensions

1. Depth shall be a minimum of four (4) feet as measured from the Facade.
2. Width shall be a minimum of four (4) feet.
3. The finished floor of the Stoop may be at-grade or raised a maximum of three (3) feet.

### B. Frontage Elements

1. Fences or walls defining the Stoop or front setback shall not exceed three (3) feet from the highest adjacent finished grade.

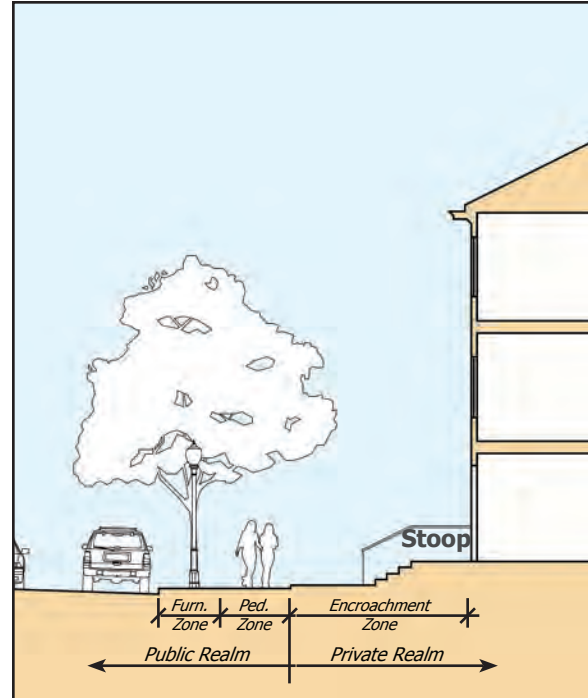


Figure FT.2-1 Cross Section, Stoop Frontage (Illustrative)

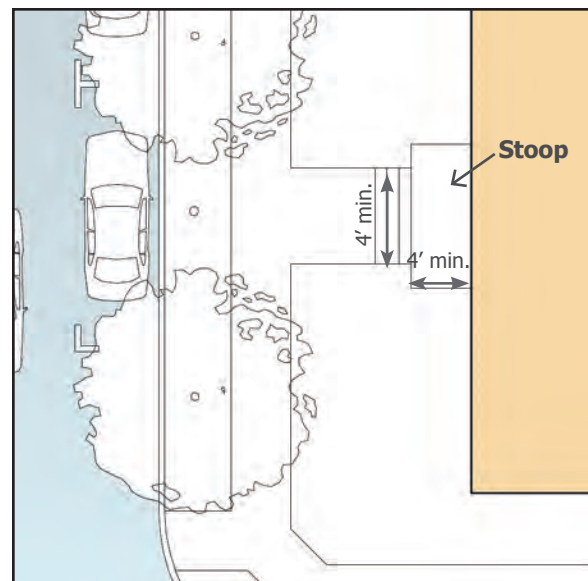


Figure FT.2-2 Plan View, Stoop Frontage (Illustrative)

## FIGURE FT.3 DOORYARD FRONTAGE

### A. Dooryard Dimensions

1. Shall be determined by the setback requirements for each zone.

### B. Frontage Elements

1. Fences or walls defining and/or retaining the Front Yard shall not exceed three (3) feet in height from the adjacent sidewalk.

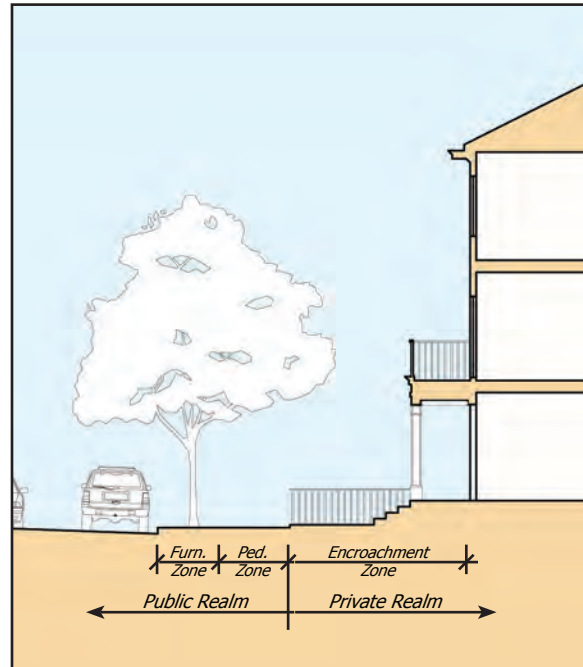


Figure FT.3-1 Cross Section, Dooryard Frontage (Illustrative)

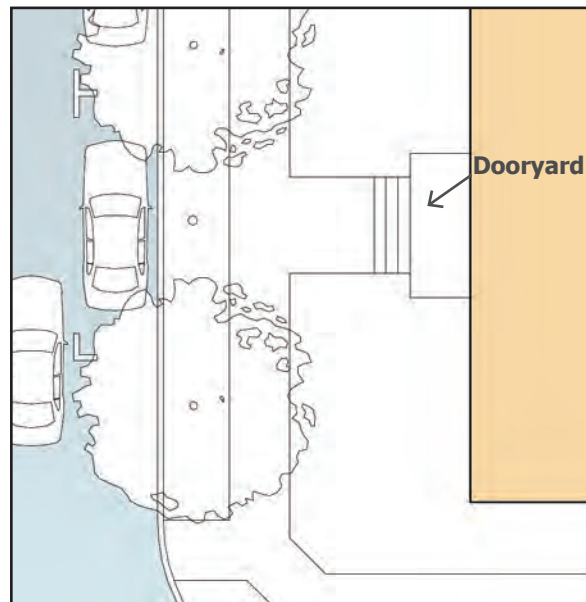


Figure FT.1-2 Plan View, Dooryard Frontage (Illustrative)

## FIGURE FT.4 FORECOURT FRONTAGE

### A. Forecourt Dimensions

1. Depth shall be between 10 and 40 feet as measured from the Facade.
2. Width shall be between 20 to 40 feet.
3. The finished floor of the Forecourt may be raised up to three (3) feet from the sidewalk with a retaining wall at the Frontage Line.

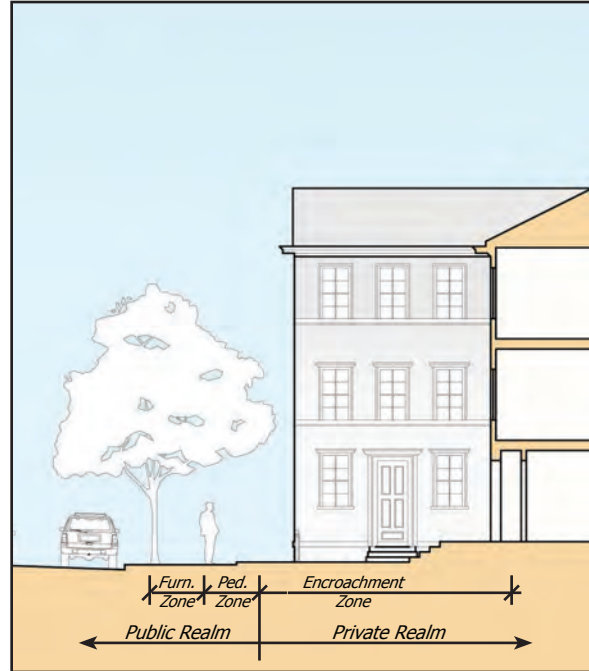


Figure FT.4-1 Cross Section, Forecourt Frontage (Illustrative)

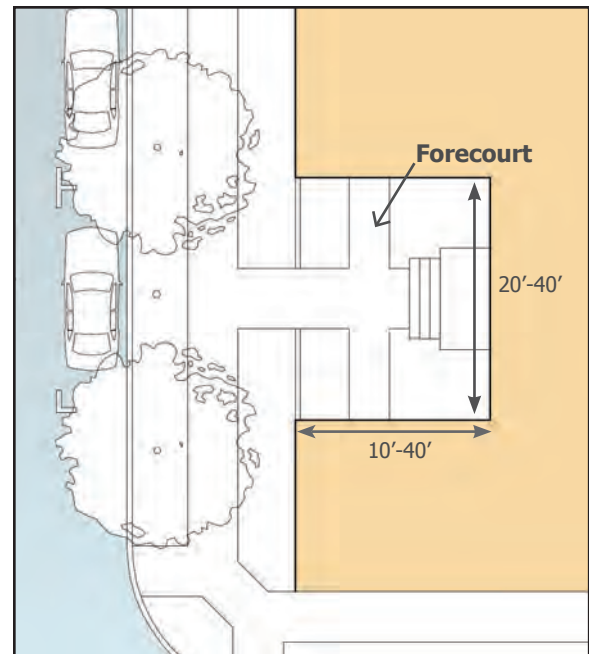


Figure FT.4-2 Plan View, Forecourt Frontage (Illustrative)

## FIGURE FT.5 SHOPFRONT FRONTAGE

### A. Shopfront Dimensions

1. Height shall be between 12 to 25 feet, as measured from the adjacent sidewalk to the ceiling of the ground floor.
2. Fenestration shall be a minimum of 65% of the Facade's first floor wall area.
3. Shopfronts may be recessed from the Frontage Line up to eight (8) feet.

### B. Frontage Elements

1. At the Facade, awnings shall only cover windows and doors.
2. The Pedestrian Zone shall be paved from building face to curb.

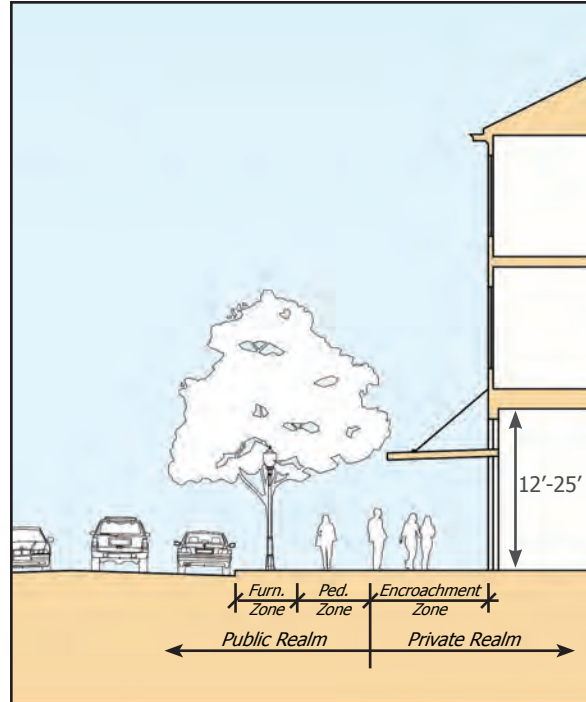


Figure FT.5-1 Cross Section, Shopfront Frontage (Illustrative)

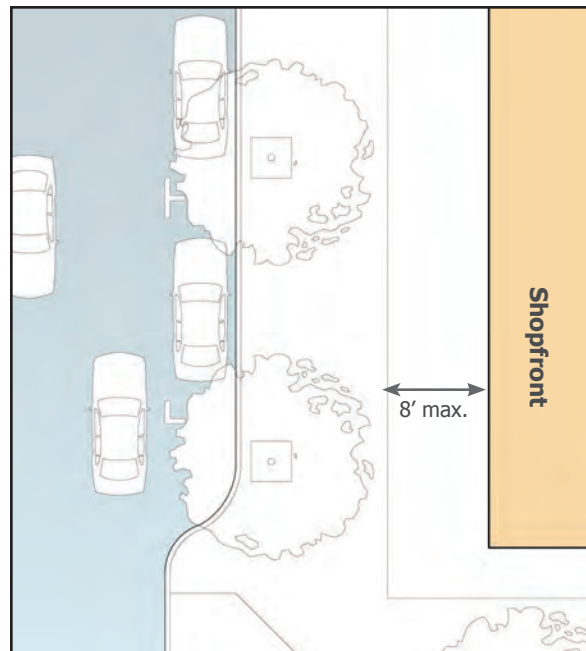


Figure FT.5-2 Plan View, Shopfront Frontage (Illustrative)

## FIGURE FT.6 CHINATOWN SHOPFRONT FRONTAGE

### A. Chinatown Shopfront Location

The Chinatown Shopfront is permissible along the following thoroughfares:

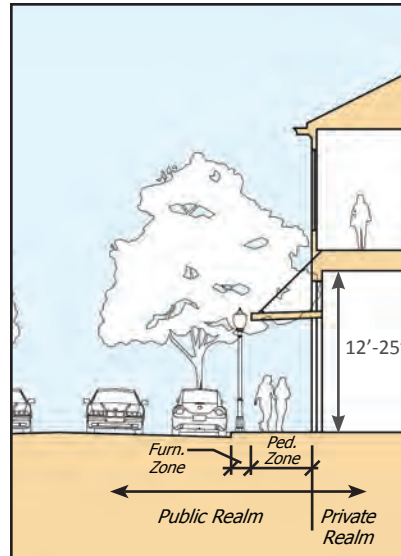
- |                |               |
|----------------|---------------|
| 1. Ahui        | 11. Kawaiahao |
| 2. Chapin      | 12. Keawe     |
| 3. Commins     | 13. Koula     |
| 4. Coral       | 14. Lana      |
| 5. Curtis      | 15. Pensacola |
| 6. Emily       | 16. Piikoi    |
| 7. Halekauwila | 17. Pohukaina |
| 8. Hoolai      | 18. Queen     |
| 9. Illaniwai   | 19. Waimanu   |
| 10. Kamani     |               |

### B. Chinatown Shopfront Dimensions

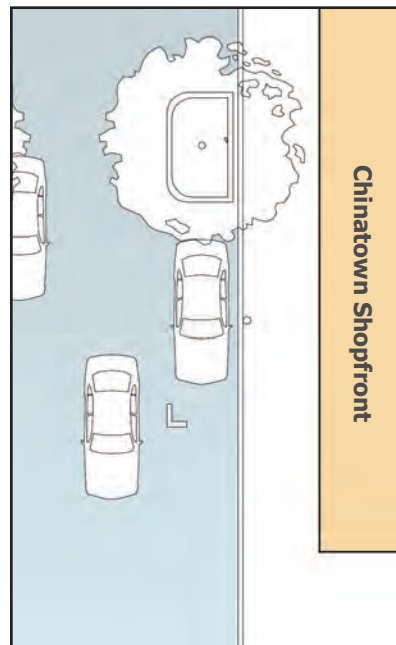
- Height shall be between 12 to 25 feet, as measured from the adjacent sidewalk to the ceiling of the ground floor.
- Fenestration shall be a minimum of 65% of the Facade's first floor wall area.

### C. Frontage Elements

- At the Facade, awnings shall only cover windows and doors.
- Where provided, light fixtures may extend through the awning.
- Where provided, signs that hang under the shed roof or awning shall be illuminated.
- The Pedestrian Zone shall be paved from building face to curb.



**Figure FT.6-1 Cross Section, Chinatown Shopfront Frontage (Illustrative)**



**Figure FT.6-2 Plan View, Chinatown Shopfront Frontage (Illustrative)**



## FIGURE FT.7 RAISED SHOPFRONT FRONTAGE

The Raised Shopfront Frontage type shall be used in established floodplain areas only.

### A. Raised Shopfront Dimensions

1. Height shall be between 12 to 25 feet, as measured from the adjacent sidewalk to the ceiling of the ground floor.
2. Fenestration shall be a minimum of 65% of the Facade's first floor wall area.
3. Shopfronts may be recessed from the Frontage Line up to 10 feet.

### B. Frontage Elements

1. A minimum of one (1) approved 25 gallon minimum container size, 2" caliper minimum tree shall be planted within the setback for every 30 feet of Frontage Line or fraction thereof.
2. Trees shall match the species of Street Trees on the Public Frontage, except that along Ala Moana Boulevard, when the Raised Shopfront Frontage is used, a row of Rainbow Shower Trees shall be planted as a part of the new development. The trees shall create a double row at 45' On Center Spacing with the required Coconut Palms that are planted in the right of way.
3. Awnings may be applied as per Encroachment requirements.

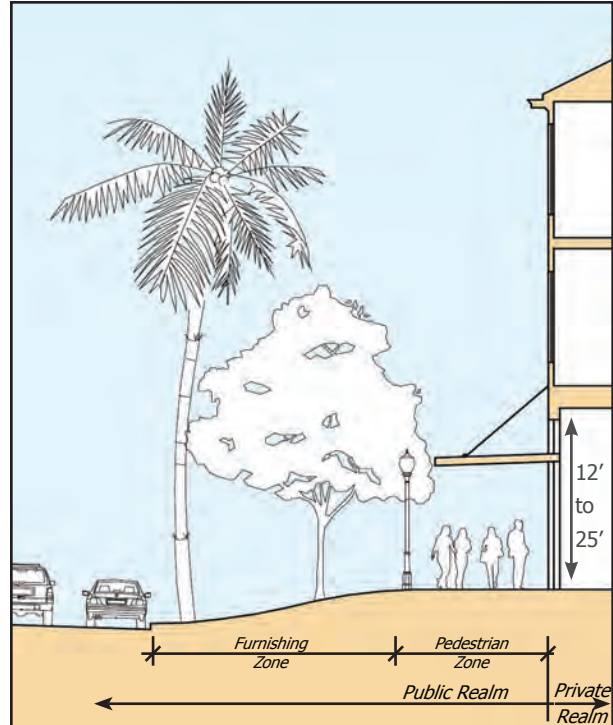


Figure FT.7-1 Cross Section, Raised Shopfront Frontage (Illustrative)

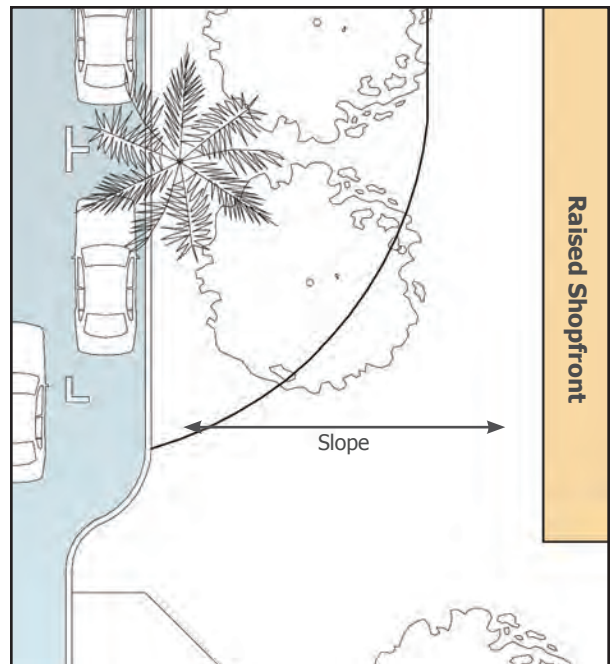


Figure FT.5-2 Plan View, Raised Shopfront Frontage (Illustrative)



## FIGURE FT.8 TERRACE FRONT FRONTAGE

Where front Build to Lines are greater than 15 feet, the Terrace Front Frontage type shall be used.

### A. Frontage Dimensions

1. Determined by the setback requirements of each zone.

### B. Frontage Elements

1. A minimum of one (1) approved 25 gallon minimum container size, 2" caliper minimum tree shall be planted within the setback for every 30 feet of Frontage Line or fraction thereof
2. Trees shall match the species of Street Trees on the Public Frontage, except that along Ala Moana Boulevard, when the Raised Shopfront Frontage is used, a row of Rainbow Shower Trees shall be planted as a part of the new development. The trees shall create a double row at 45' On Center Spacing with the required Coconut Palms that are planted in the right of way.
3. Lawns and landscaping shall be permitted within setback.
4. Ground may be paved to match the public sidewalk or special, decorative pavement can be used to delineate the terraced space.

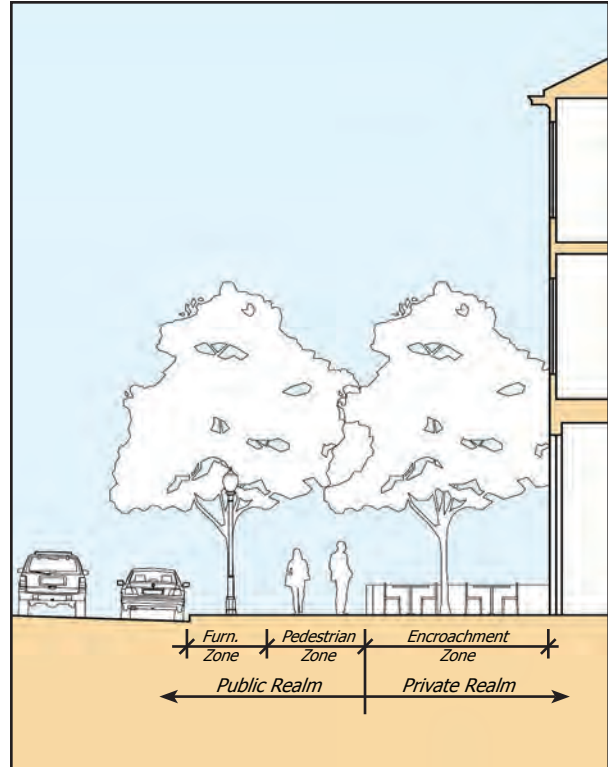


Figure FT.8-1 Cross Section, Terrace Front Frontage (Illustrative)

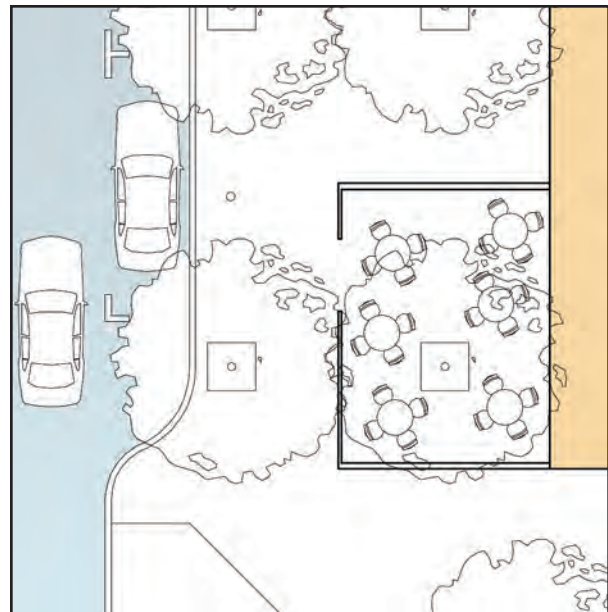


Figure FT.8-2 Plan View, Terrace Front Frontage (Illustrative)

## FIGURE FT.9 RAISED TERRACE FRONT FRONTAGE

The Terrace Front type shall be used in established floodplain areas only.

### A. Raised Terrace Front Dimensions

1. Height shall be between 12 to 25 feet, as measured from the adjacent sidewalk to the ceiling of the ground floor.
2. Fenestration shall be a minimum of 65% of the Facade's first floor wall area.
3. Shopfronts may be recessed from the Frontage Line up to 10 feet.

### B. Frontage Elements

1. Awnings may be applied as per Encroachment requirements.

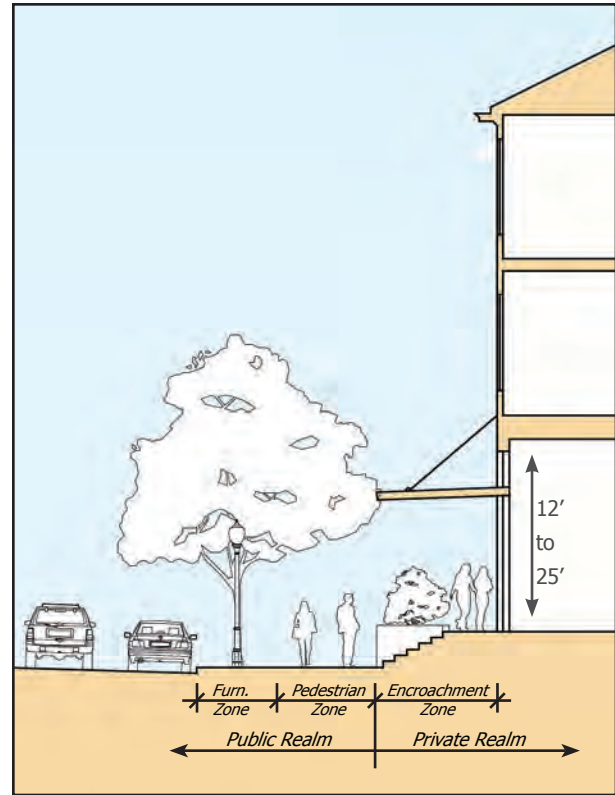


Figure FT.9-1 Cross Section, Raised Terrace Front Frontage (Illustrative)

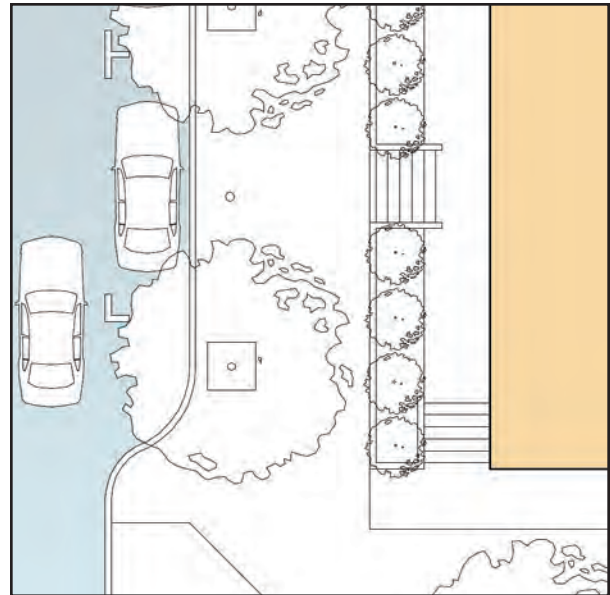


Figure FT.9-2 Plan View, Raised Terrace Front Frontage (Illustrative)

## FIGURE FT.10 GALLERY FRONTAGE

The Gallery type shall be used in conjunction with ground floor Retail use only.

### A. Gallery Dimensions

1. Height and proportion shall correspond to the first floor of the Facade.
2. The minimum width and height dimension is 12 feet.
3. Soffits, columns/arches should be consistent with the architecture detailing of the building.
3. Along the Principal Frontage, there shall be a minimum of 10 feet between Gallery openings along the Right of Way.
4. Along Front Facades within the Gallery, windows and doors of Shopfronts shall be at least 10 feet tall and together shall comprise 65% of the ground floor wall area facing the street.
4. A setback between two (2) and four (4) feet shall be provided between the curb and face of the Gallery (except at curb extensions for intersection).

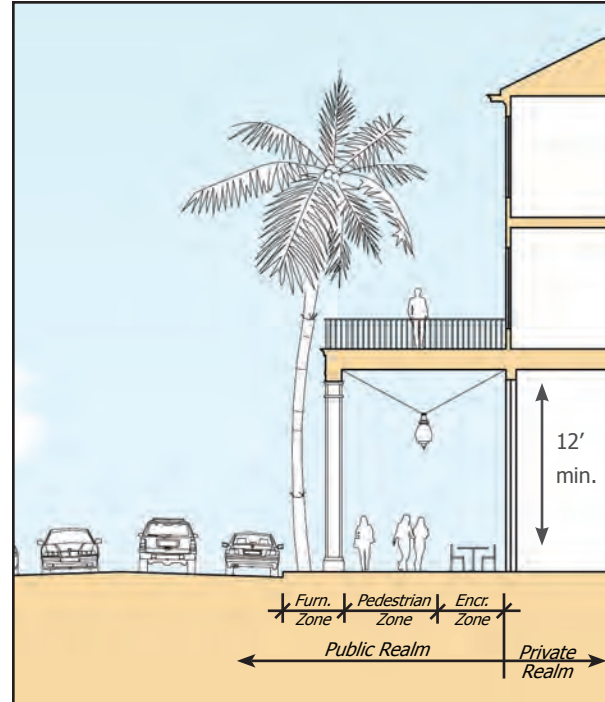


Figure FT.10-1 Cross Section, Gallery Frontage (Illustrative)

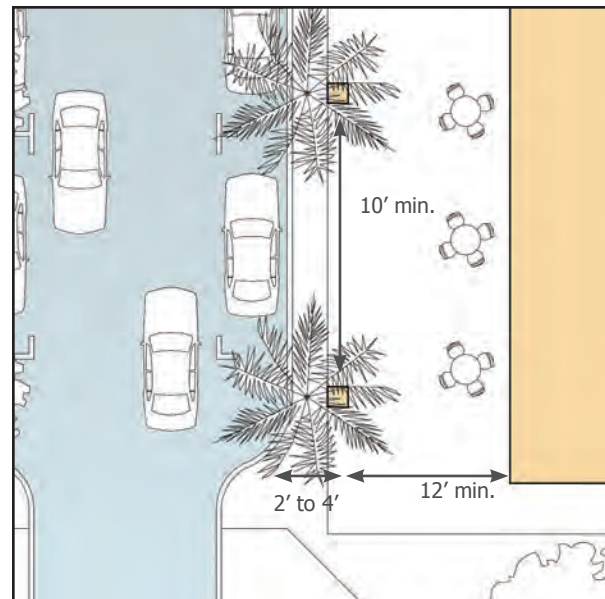


Figure FT.10-2 Plan View, Gallery Frontage (Illustrative)

## FIGURE FT.11 ARCADE FRONTAGE

The Arcade type shall be used in conjunction with ground floor Retail use only.

### A. Arcade Dimensions

1. Height and proportion shall correspond to the ground floor of the Facade.
2. The minimum width and height dimension is 12 feet.
3. Soffits, columns/arches should be consistent with the architecture detailing of the building.
3. Along the Principal Frontage, there shall be a minimum of 10 feet between openings for the Arcade along the Right of Way.
4. Along Front Facades within the Arcade, windows and doors of Shopfronts shall be at least 10 feet tall and together shall comprise 65% of the ground floor wall area facing the street.
4. A setback between two (2) and four (4) feet shall be provided between the curb and face of Arcade (except at curb extensions for intersections).

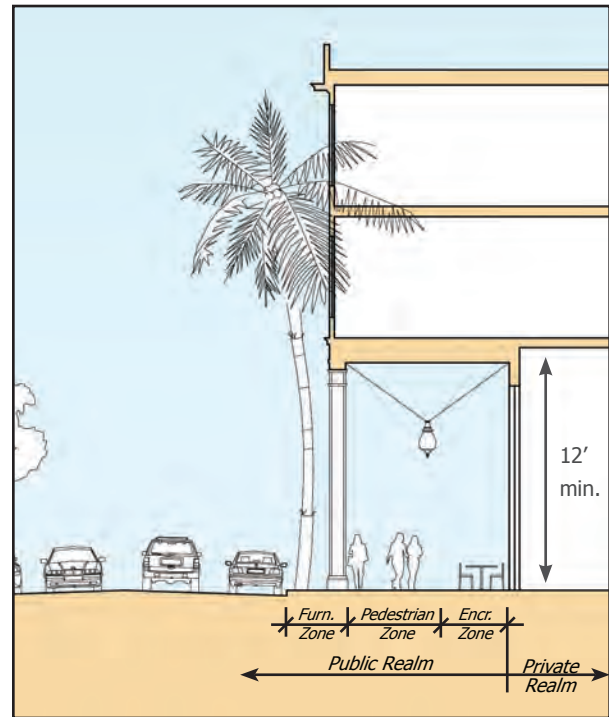


Figure FT.11-1 Cross Section, Arcade Frontage (Illustrative)

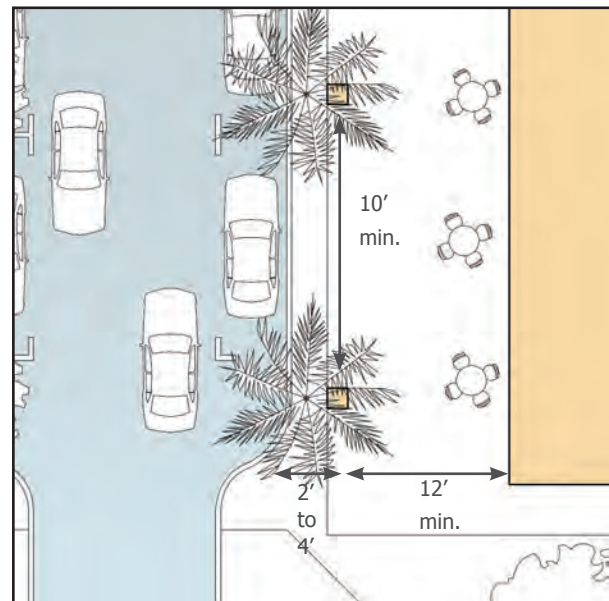


Figure FT.11-2 Ground Floor Plan View, Arcade Frontage - Roof not shown (Illustrative)

## FIGURE FT.12 KAKA'AKO FRONTAGE

### A. Frontage Elements

1. Sidewalks are not required but property owners are not restricted from including them.
2. Where possible, the area between the building and the street shall be paved with gravel or other pervious materials.
3. Landscaping should be incorporated along the building edge, in planters, or at grade and can take an informal pattern and placement.
3. Parking is permitted in front of the building for this Frontage Type.

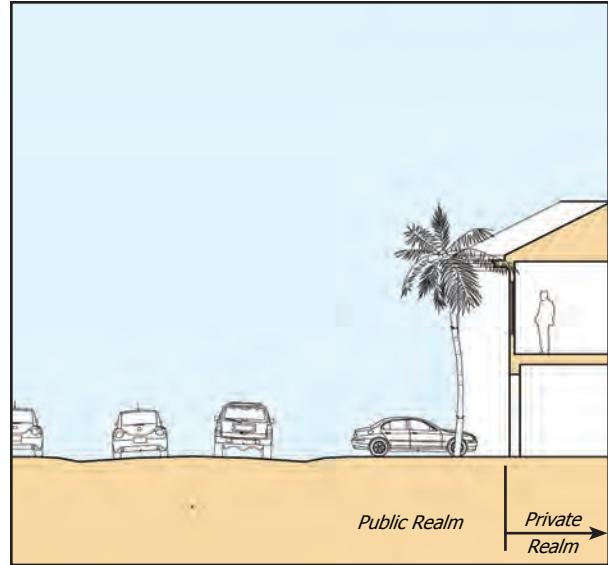


Figure FT.12-1 Cross Section, Kaka'ako Frontage (Illustrative)

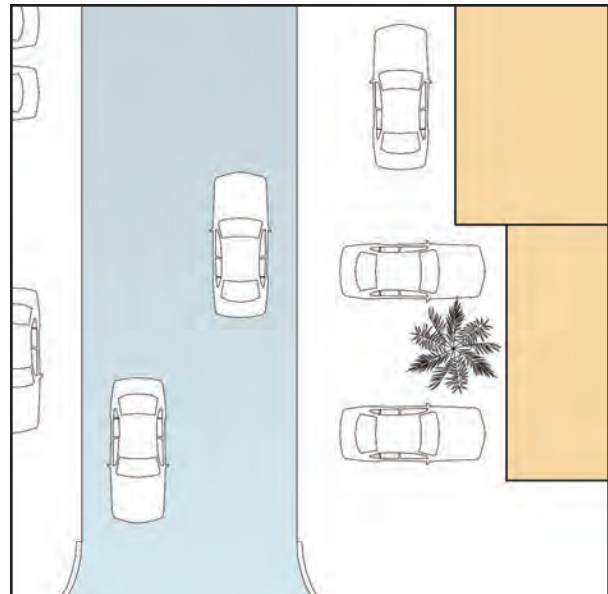


Figure FT.12-2 Plan View, Kaka'ako Frontage (Illustrative)

**FIGURE PZ.1 PEDESTRIAN ZONE STANDARDS**

Street Type	Minimum Width (in feet)		
	Frontage	Throughway	Furnishing
Service Street	n/a	6'	n/a
Street	2'	6'	5'
Avenue	2'	8'	5'
Boulevard	2'	8'	10'
Promenade Overlay*	2'	8'	5'

\*Note: Within the Promenade Overlay, frontage and furnishing standards are not applicable between Queen and King

**FIGURE PZ.2 PEDESTRIAN ZONE STANDARDS**

	Service Street	Street	Avenue	Sheridan District		Boulevard	Promenade Overlay
				Street	Avenue		
Street Trees	-	x	x	x	x	x	x
Planting Strips	-	x	x	x	x	x	x
Street Lights	-	x	x	x	x	x	x
Pedestrian Lights	-	x	x	-	x	x	x
Street Furniture	-	x	x	x	x	x	x
Public Art	-	x	x	-	-	x	x
Sign Poles	-	x	x	x	x	x	x
Fire Hydrants	-	x	x	x	x	x	x
Signal and Electrical Cabinets	-	x	x	x	x	x	x
Bike Racks	-	x	x	-	-	x	x
Special Pavement	-	x	x	x	x	x	x
Outdoor Seating	-	x	x	-	-	x	x



**Parcels/lots available for incentive zoning**

**Rail station**

**Kaka'ako Mauka Area**

Scale: 0, 500, 1,000 Feet

North Arrow

Streets shown: S. King, Ward Ave, Kapi'olani Blvd, Waimanu, Kawaeha'o, Kamae, Ala Moana Blvd, Punchbowl.

Locations marked: Kulolola, Ka'ākaukui, Kūkuluā'e'o, Kaka'ako Mauka Area.

## FIGURE 12.2 INCENTIVE TABLE

### General Requirements for all Development Bonuses:

1. All public facilities, or open space incentives shall be perpetually dedicated to public access and defined use for the life of the development, or until redevelopment of the land or project.
2. Dedication of the public facility, or open space must be registered with the Land Court.
3. All development incentives shall be maintained in good repair and use for the life of the development, or until redevelopment of the land or project.
4. If the development, building management, property management, or landowner fails to keep the incentive in good repair and use the project may face violations and penalties pursuant to §206E-22, HRS.
5. The executive director may have final decision on granting approval of a development incentive.
6. The executive director may approve modifications to the development bonuses for projects unable to fulfill the minimum requirements of the incentives.
7. A single project or parcel may accumulate multiple development bonuses. If in the process of achieving a certain incentive, a project satisfies the requirements for multiple development bonuses, that project may accumulate and utilize all of the development bonuses it satisfies the requirements for, not to exceed the maximum approved FAR.

Code	Incentive	Development Bonus	Description
<b>Live-Work</b>			
LW1	35% Reserved Housing	3.00 FAR	Provide at least 35% of the total number of the residential units in the Project as reserved housing units to gain an additional development bonus. The additional Reserved Housing units, above minimum requirements, must be built within the Kakaako Community Development District.
LW2	40% Reserved Housing	3.50 FAR	Provide at least 40% of the total number of the residential units in the Project as reserved housing units to gain an additional development bonus. The additional Reserved Housing units, above minimum requirements, must be built within the Kakaako Community Development District.
LW3	45% Reserved Housing	4.00 FAR	Provide at least 45% of the total number of the residential units in the Project as reserved housing units to gain an additional development bonus. The additional Reserved Housing units, above minimum requirements, must be built within the Kakaako Community Development District.
LW4	45% Micro Units	4.00 FAR	Provide at least 45% of the total number of the residential units on a lot no greater than 20,000 square feet as micro units to gain an additional development bonus. Micro units to be no less than 300 square feet and no greater than 500 square feet in interior space and must provide facilities as defined as a dwelling unit.
LW5	Light Industrial Use	Floor Area Exemption + 0.3 FAR or 10 foot podium height increase	Maintain the floor area of an existing light industrial use space, on-site, to gain an additional 10ft in Podium Height or an additional development bonus. The existing light industrial floor area, on site, will be exempt from new development floor area calculations. All area dedicated under this use must remain for the life of the development, or until a new development permit is issued.



**FIGURE IZ.2 INCENTIVE TABLE (CONT'D)**

Code	Incentive	Development Bonus	Description
<b>Live-Work (cont'd)</b>			
LW6	Green Industry Use	Floor Area Exemption + 0.5 FAR or 10 FT podium HT increase	Develop a new light industrial use space for the manufacture, production, or development of products, goods, or services that is focused on improving the natural environment, reducing carbon emissions, or cleaning or remediating environmental hazards to gain an additional 10ft in Podium Height or an additional development bonus. The floor area on-site, dedicated to this use, will be exempt from new development floor area calculations. All area dedicated under this use must remain for the life of the development, or until a new development permit is issued.
LW7	Urban Agriculture / Food Production & Cultivation	Floor Area Exemption + 2.00 FAR	Dedicate land area or floor area for the growing, production, or cultivation of food, 90% of which should be sold on site, at a farmer's market or produce market in the district or consumed within the district for a development bonus. All dedicated land area or floor area will be exempt from new development floor area calculations. All area dedicated under this use must remain for the life of the development, or until a new development permit is issued.
<b>Public Amenity (Play)</b>			
PA 1	<b>Public Art</b>	<b>0.25 FAR</b>	Provide a privately funded, publicly accessible, art installation, gallery space, vertical exterior building facade space of not less than 20 ft x 100 ft to gain an additional development bonus. Art installation to be equivalent to 1% of the Project's construction costs not less than \$10,000 in value. Gallery space and exterior building facade space must be permanently dedicated to the purpose of displaying art installations. Exterior building facade space must not be used for commercial or advertising purposes. Art to be designed, built, and installed by a "Hawaii Artist", as defined by the Hawaii State Foundation on Culture and the Arts.
PA 2	<b>Public Facility</b>	<b>See Fig. IZ.2.1</b>	Construct and dedicate a public facility from the HCDA's approved list of public facilities within the Project site to gain an additional development bonus. (Please see Figure IZ.2.1 for list of approved public facilities)
PA 3	<b>Public Open Space</b>	<b>0.50 FAR</b>	Dedicate at least 50% of the required open space area, on-site, to public use, or improve, or add public amenities to an existing public open space to gain a development bonus. The dedicated area is required to be perpetually publicly accessible and usable. Improvement to an existing public open space, or additional public amenities shall equal to the not less than 50% of the appraised land value for the required open space. Type of public space and location within neighborhood zones, shall comply with Figure 1.11 Civic Plan.

**FIGURE IZ.2 INCENTIVE TABLE (CONT'D)**

Code	Incentive	Development Bonus	Description
<b>Environmental Improvement</b>			
ENV 1.1	<b>LEED/WELL Silver</b>	<b>0.50 FAR</b>	Achieve a LEED/WELL Silver Certification to gain an additional development bonus.
ENV 1.2	<b>LEED/WELL Gold</b>	<b>0.75 FAR</b>	Achieve a LEED/WELL Gold Certification to gain an additional development bonus.
ENV 1.3	<b>LEED/WELL Platinum</b>	<b>1.00 FAR</b>	Achieve a LEED/WELL Platinum Certification to gain an additional development bonus.
ENV 2	<b>Shelter Hardening</b>	<b>2.00 FAR</b>	Provide a hardened shelter, on-site, per Enhanced Hurricane Protection Area (EHPA) standards set by the State of Hawaii Structural Guidelines for Hurricane Evacuation Shelters, to gain an additional development bonus. The shelter shall provide at least 30 SF of space per household in the project and/or 10 SF per occupant of commercial space in the project. Provide at least 100 SF for 10% of total households in the project for disability access. Dedicated hardened shelter space can have dual use but must be solely used as a shelter during major storm or natural disaster events. An emergency operational plan for the shelter shall be approved by the Hawaii Emergency Management Agency (HI-EMA), and in place, prior to approval of the project's Temporary Certificate of Occupancy (TCO).
ENV 3	<b>Rainwater Management</b>	<b>0.50 FAR</b>	Provide additional, on-site, rainwater retention to gain an additional development bonus. The system must capture, store, and reuse at least an additional 1.5 inches of rainwater beyond what is required under the City and County of Honolulu's Rules on Water Quality.
ENV 4	<b>Renewable Energy</b>	<b>0.50 FAR</b>	Provide, on-site, renewable power generation or solar water heating system to gain an additional development bonus. The system must provide at least 20% of the projected energy usage for the project, or 100% of the Project's hot water capacity.
ENV 5	<b>Emergency Power</b>	<b>2.00 FAR</b>	Provide, on-site, emergency power storage or generation for a multi-family residential project, food storage or food warehousing, emergency services, or other uses deemed essential for the response to natural disasters. The power storage or generation capacity must be at least fourteen (14) days to mitigate pressure on municipal infrastructure or aid in the response to natural disasters.

**FIGURE IZ.2 INCENTIVE TABLE (CONT'D)**

Code	Incentive	Development Bonus	Description
<b>Urban Form</b>			
UF 1	<b>Public Parking—</b>	<b>0.5 FAR or 10 FT podium HT increase</b>	Provide at least 50 publicly accessible parking stalls on a lot 20,000 SF or less, or at least 100 publicly accessible parking stalls on a lot 20,001 SF or greater to gain an additional 10ft Podium Height or a development bonus.
UF 2	<b>Pedestrian Cover</b>	<b>0.5 FAR or 10 FT podium HT increase</b>	Provide at least 90% of ground level building frontage with a pedestrian canopy or awning to gain an additional 10 ft Podium Height or an additional development bonus. Must be a minimum of 6 ft in horizontal depth from exterior face of the building facade. Shall be compliant with §15-217-39. Shall be located along public walkways, sidewalks, and right-of-ways. Exempt from floor area calculations.
UF 3	<b>Robotic Parking</b>	<b>0.5 FAR or 10 FT podium HT increase</b>	Dedicate at least 50% of all project off-street parking floor area for robotic automated parking to minimize the lot area dedicated to parking structures to gain an additional 10 feet in podium height or an additional development bonus.
UF 4	<b>Cultural Restoration</b>	<b>Floor area exemption + 0.50 FAR</b>	Restore, reestablish, or rehabilitate a cultural resource [example; waterway, food production/cultivation area, native planting area to be used for cultural practices and medicine] that perpetuates traditional cultural practices on, through, below, or above the proposed development site. The resource shall be accessible to the public to conduct traditional cultural practices and shall be validated by a Hawaiian serving organization. A stewardship plan shall be established for the resource. All dedicated land area or floor area for this use will be exempt from new development floor area calculations. All area dedicated under this use must remain for the life of the development, or until a new development permit is issued.

**FIGURE 12.3 APPROVED PUBLIC FACILITIES**

Code	Incentive	Development Bonus	Description
PA 2.1	<b>Public Community Garden</b>	<b>1.00 FAR</b>	Provide at least 10,000 SF of publicly dedicated space for the establishment and use of a publicly accessible community garden. Provide infrastructure and facilities for irrigation and waste disposal. The garden space shall be designed to mitigate any water or soil run-off into municipal drainage systems. Operation and access to the garden should meet all City & County of Honolulu Community Recreation Garden Program standards. The garden may be located on parking structure roofs, podiums, or building roofs as long as perpetual public access is granted to the space. The developer/landowner may establish a garden board to oversee operations of the garden.
PA 2.2	<b>Public Dog Park</b>	<b>0.50 FAR</b>	Provide at least 8,000 SF of publicly dedicated space for the establishment and use of a publicly accessible off-leash dog park. The park dimension should be a minimum of 40 feet in width. Provide fencing, infrastructure, and facilities for water fountain, dog water fountain, and waste disposal. Must comply with all City & County of Honolulu Department of Parks & Recreation rules and ordinances for off-leash parks. May be located on parking structures, podiums, or roofs as long as perpetual public access is granted to the space.
PA 2.3	<b>Public Pavilion</b>	<b>0.50 FAR</b>	Design and construct a publicly dedicated and accessible pavilion to be used as a venue for entertainment, cultural events, community activities and functions, or educational functions. The structure shall be meet all applicable health and life safety requirements. It shall be at last 2,000 SF in size surrounded by a landscaped lawn or seating area. The structure may be open on all sides but shall protect the users of the pavilion from all natural elements. Electrical power and lighting shall be provided.
PA 2.4	<b>Public Play Courts</b>	<b>1.00 FAR</b>	Provide at least one (1) regulation sized pickle ball, tennis, basketball, or other approved hard courts. An additional 1.0 FAR bonus shall be provided with everyone (1) additional play court provided, with a maximum of 4.0 FAR total. Provide all associated regulation specified equipment including nets, backboards, and striping. All courts should meet the appropriate requirement by the associated regulating sport bodies. Including size, court finishing, and levelness. Courts should be publicly accessible and perpetually publicly dedicated to the use of the courts.
PA 2.5	<b>Educational Facilities</b>	<b>0.25 FAR</b>	Establish an educational facility that provides education and resources for schooling, tutoring, training, and/or mentoring of children from pre-kindergarten to high school. Area for this dedicated use to be determined by the services provided.

**FIGURE IZ.3 APPROVED PUBLIC FACILITIES (CONT'D)**

Code	Incentive	Development Bonus	Description
PA 2.6	Keiki / Kupuna Care Facility	0.25 FAR	Establish a facility for the education, enrichment, and care of children and elderly. The facility is not intended to be a nursing, care home, or acute care facility. Area for this dedicated use to be determined by the services provided.
PA 2.7	Farmer's Market	1.00 FAR	Provide at least 50,000 SF of useable area to establish a commercial space for the operation of a weekly Farmer's Market. The use of the space is intended for the sale of locally grown, produced, and manufactured agricultural products sold directly to consumers. The space dedicate to this use, may be utilized for other uses when the Farmer's Market is not in operation.
PA 2.8	Public Recreation Equipment & Space	1.00 FAR	Provide at least 2,000 SF of publicly dedicated space for the establishment and use of a publicly accessible recreation area with the following recreational equipment or surfacing; kids play equipment, exercise equipment, skateboard ramp or obstacles, kids bike track, adolescent BMX track, or other equipment approved by the executive director. The project lot size shall be 20,000 SF or greater. All duty of care must be given to public safety.
PA 2.9	Hālau	1.50 FAR	Provide at least a 3,000 SF of publicly dedicated space for the establishment and use of a publicly accessible Hālau for the dedicated purpose of perpetuating Native Hawaiian arts, music, performance, cultural practices, and gatherings. Establish a stewardship plan to maintain and broker access for community groups, organizations, schools, and other community organizations. The space shall not be used for commercial purposes.
PA 2.10	Community / Nonprofit Storefront	0.50 FAR + additional 0.10 FAR for every additional 500 SF, up to a total maximum 1.00 FAR	Provide at least 1,500 SF of ground floor commercial floor area with a storefront facing a public thoroughfare or right-of-way dedicated for use by nonprofit organizations, legal aid, and other community-based development organizations. The space is not intended for political or religious organizations.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

Amendments to and compilation of chapter 15-217, Hawaii Administrative Rules, on the Summary Page dated [REDACTED], were adopted on [REDACTED], following public hearings held on [REDACTED] and [REDACTED], after public hearing notices were given in the Honolulu Star Advertiser, Hawaii Tribune-Herald, The Maui News, West Hawaii Today, and The Garden Island, on [REDACTED].

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

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CHASON ISHII  
Chairperson  
Hawaii Community Development  
Authority

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JAMES TOKIOKA  
Director  
Department of Business,  
Economic Development, and  
Tourism

APPROVED AS TO FORM:

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Deputy Attorney General

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JOSH GREEN, M.D.  
Governor  
State of Hawaii

Date:

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Filed

## **V. ADMINISTRATIVE MATTERS**

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes – *no attachments*

1. Discussion with Becker Communications' Representative about creating a YouTube Video for the Board's outreach purposes
2. Presentations to Industry Associations
3. Staff's Small Business Outreach