

DEPARTMENT OF LAND UTILIZATION  
CITY AND COUNTY OF HONOLULU

AMENDMENTS TO CHAPTERS 11, 12, 13, 15, 17, 18 AND 20,  
PART 2 RULES RELATING TO SHORELINE SETBACKS AND  
THE SPECIAL MANAGEMENT AREA  
(Adopted April 6, 1998)

SUMMARY

1. §11-1 is amended.
2. §§12-2, 12-3 and 12-4 are amended.
3. §§12-6, 12-7, and 12-8 are renumbered and §§12-8 is amended.
4. New §§12-6, 12-7 and 12-8 are added.
5. §§13-3 and 13-5 are amended.
6. §§15-1, 15-2, and 15-3 are amended.
7. §§17-2, 17-4, and 17-5 are amended.
8. §§17-9 and 17-10 are added.
9. §§18-3, and 18-4 are amended.
10. §§18-6 is amended.
11. §§18-5.01 is added.
12. §§20-3, and 20-4 are amended.
13. §§20-5.01 is added.
14. §§20-6 is amended.

DEPARTMENT OF LAND UTILIZATION

PART 2 RULES RELATING TO SHORELINE SETBACKS AND  
THE SPECIAL MANAGEMENT AREA

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DEPARTMENT OF LAND UTILIZATION

PART 2 RULES RELATING TO SHORELINE SETBACKS AND  
THE SPECIAL MANAGEMENT AREA

SUBPART 1 GENERAL PROVISIONS

CHAPTER 11

DEFINITIONS

§11-1 Definitions

§11-1 Definitions.

"**Activity**" means any grubbing or any grading or stockpiling of earth materials.

"**Applicant**" means any individual, organization, partnership, firm, association, trust, estate, or corporation and any agency of federal, state, or county government.

"**Certified shoreline**" or "**certified shoreline survey**" means the shoreline as marked on the ground and as shown on a shoreline survey which has been certified by the state department of land and natural resources.

"**Civil fine**" and "**administrative fine**" means any monetary penalty, imposed by a competent judicial authority or by the director, on a violator for a violation of the Shoreline Setback Ordinance or the Special Management Area Ordinance.

"**Civil fines program**" means the program for imposing civil fines as a means of enforcing violations of the Shoreline Setback Ordinance and Special Management Area Ordinance, which includes the addition of unpaid civil fines to taxes, fees and charges collected by the city.

"**Collecting agency**" means an agency of the city or its representative, authorized to collect specified taxes, fees or charges established by statute, act, ordinance, rules or regulations.

**"Contested case hearing"** means a proceeding in which legal rights, duties, or privileges of specific parties are determined pursuant to H.R.S. §§91-9, 91-10, 91-11, 91-12 and 91-13.

**"Days"** means calendar days, unless otherwise specified.

**"Decision and order"** means the written findings of fact, conclusions of law and decision and order of the director of land utilization.

**"Department"** means the department of land utilization, City and County of Honolulu.

**"Director"** means the director of land utilization, City and County of Honolulu, or the director's designated representative.

**"Earth material"** means any sand, coral or coral rubble, rocks, soil, fill, or other marine deposits.

**"Effective date"** means the date upon which the director signs the written decision in any matter under his jurisdiction.

**"Excavation" or "cut"** means any act by which earth material is cut into, dug or moved, and any condition resulting therefrom.

**"Fill"** means any earth material which is placed or deposited by artificial means and any condition resulting therefrom.

**"Grading"** means any excavation or fill or any combination thereof.

**"Grubbing"** means any act by which vegetation, including trees, shrubs or other plants, is dislodged or uprooted from the surface of the ground.

**"Intervention"** means the process by which someone other than the appellant or the director becomes a party in a contested case hearing on an appeal.

**"Nonconforming structure"** means a structure or portion of a structure which was previously lawful but which is located within the shoreline setback as a result of subsequent beach erosion, or as a result of changes in the law relating to the shoreline setback.

**"Order"** means a document signed by the director, identifying a violation, specifying corrective action and assessing a fine or other penalty as provided by these rules.

**"Party"** means the appellant; and the director; and any intervenor who has complied with either section 12-4 or 17-9 and has been admitted by the director as a party.

**"Practicable alternative"** means an alternative to the proposed project which is available and capable of being done, taking into consideration existing technology and logistics, and which would accomplish the basic purpose of the project while avoiding or having less adverse impact on the shoreline area.

**"Shore protection structure"** means a structure which may artificially fix the location of the shoreline, including but not limited to groins, seawalls and revetments.

**"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.

**"Shoreline area"** means all of the land area between the shoreline and the shoreline setback line or waiver line, if applicable. Under certain conditions, the shoreline area may include the area between mean sea level and the shoreline.

**"Shoreline lot"** means a zoning lot of record any portion of which lies within the shoreline area, or when there is no certified shoreline survey, any portion of which lies within 55 feet inland of the shoreline. A lot may be determined to be a shoreline lot notwithstanding the existence of a second lot between the lot and the shoreline.

**"Shoreline setback line"** means that line established pursuant to the Shoreline Setback Ordinance, which runs inland from and parallel to the certified shoreline at the horizontal plane.

**"Shoreline setback ordinance"** means Ordinance No. 92-34, as amended, which is codified as Chapter 23, Revised Ordinances of Honolulu, 1990, as amended.

**"Shoreline survey"** means a survey performed by a registered land surveyor in the State of Hawaii for the purpose of determining the location of the shoreline, in accordance with Hawaii Administrative Rules, Chapter 13-222, "shoreline certification."

**"Special management area"** means the land extending inland from the shoreline, as established in this chapter and delineated on the maps established by the city council and filed with the council and agency pursuant to Section 205A-23, Hawaii Revised Statutes.

**"Special management area ordinance"** means Ordinance No. 84-4, as amended, codified as Chapter 25, Revised Ordinances of Honolulu, 1990, as amended.

**"Special management permit"** means a special management area use permit, a special management area minor permit or a special management area emergency permit, as defined in Chapter 25, Revised Ordinances of Honolulu 1990, as amended.

**"Stockpiling"** means the temporary open storage of earth materials.

**"Structure"** means any portion of any building, road, pipe, flume, utility line, fence, groin, wall, or revetment; or anything constructed or erected with a fixed location at or under the ground, or requiring a fixed location on or under the ground, or attached to something having or requiring a fixed location on or below the ground.

**"Unpaid civil fine"** means any outstanding civil fine due and owing to the city by a violator, in whole or in part.

**"Violation"** means the use of any structure or land, or the location or construction of any structure without a special management permit or shoreline setback variance; and failure to comply, in whole or in part, with the terms or conditions of any permit or authorization issued pursuant to Chapter 23 or Chapter 25, Revised Ordinances of Honolulu.

**"Violator"** means any individual, organization, partnership, firm, association, trust, estate, public or private corporation, or any other legal entity that has an interest in the property on which the violation occurs; and may include any or all of the following: fee owner, leaseholder, subleaseholder and other assignee, tenant, contractor or any other person, party or parties responsible for a violation or with an interest in the property on which the violation occurs.

**"Waiver line"** means that line established by the director on a shoreline lot landward of which activities or structures may be allowed without a certified shoreline survey. [Eff: 6/13/1994; am: **MAY 17 1998** ]  
(Auth: ROH §§23-1.3, 23-1.16, 25-1.3, HRS §205A-1, HRS §91-2)  
(Imp: ROH §23-1.16, HRS §91-2)

CHAPTER 12

CONTESTED CASE HEARINGS

§12-1	Applicability
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§12-9	Motions
§12-10	Arguments, briefs and proposed findings
§12-11	Decision and order

§12-1 Applicability. These procedures shall apply to hearings pursuant to Chapters 18 and 20. [Eff: 6/13/1994] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

§12-2 Request for hearing. (a) Any person subject to an order pursuant to §18-2 and §20-2 may request a hearing to appeal any requirement of the order. The request must be made in accordance with the following requirements:

- (b) The request shall include:
- (1) The appellant's name, mailing address, and telephone number.
  - (2) Identification of the property by street address and tax map key number.
  - (3) The appellant's interest in the property, or if the appellant has no property interest, how the appellant is adversely affected by the order.
  - (4) Designation of the specific applicable provision of the ordinance or rules.

(5) The action of the director and the date the action was taken.

(6) Reasons for requesting a hearing, including statements as to why the appellant believes the order is in error.

(c) The request must be signed in black ink by the appellant or the appellant's duly authorized representative or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of that person's knowledge, information, and belief, every statement made is true and correct and no such statements are misleading; and that the request is not interposed for delay.

(d) The original and four copies of the request shall be filed.

(e) The written request for a hearing must be received at the department of land utilization within 30 days of the date of mailing, personal service, or publication of the order in a newspaper of general circulation.

(f) If the request is not made within 30 days, the director may refuse to hold a hearing. Failure to comply with any provisions of this section shall constitute grounds for refusal to hold the hearing.

(g) A request for a contested case hearing for a shoreline setback variance shall comply with §17-9 and §17-10.

[Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

§12-3 Pre-hearing procedure. (a) Within 10 days after receipt of the request for a hearing, the director shall forward copies of the request to the fee owner and lessee, if any, of the affected property, if they are not the appellant.

(b) The director shall, upon consultation with the parties, set the date for the hearing on the appeal.

(c) At least 10 days prior to the scheduled date for hearing, the director, or the director's designated representative, may hold a prehearing conference for the purpose of arriving at a settlement or clarification of the issues and, to the extent possible, an agreement on facts, matters, or procedures as may facilitate and expedite the hearing or adjudication of the issues.

(d) Briefs, motions, and supporting, opposing and reply memoranda may be submitted to the director by the parties as they deem appropriate, except that the director will not accept any motion or memorandum submitted less than five days prior to the scheduled hearing date for an appeal.

(e) All parties shall provide an original and four copies of each document submitted to the director for filing and it shall be the responsibility of each party to provide copies of the documents to all parties to the appeal and to file a certification with the director attesting to the transmittal of the document, setting forth therein the name of the document, the date of the transmittal, the manner of delivery, and the name and address to which the document was transmitted.

(f) Any witness subpoena requests shall be filed at the time of the prehearing conference.

(g) Any party may by written demand, request of any other party to the proceedings, the full disclosure of the identity of all witnesses to be called by the other party and all exhibits to be introduced by the other party at the hearing. All disclosures shall be made no later than 7 days prior to the date set for the hearing. The director at the director's discretion may also order that the parties exchange a list of exhibits and witnesses prior to the hearing. The failure to comply with a disclosure request may result in the evidence or witness not being permitted to be presented at the hearing.

[Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §§23-1.14, 23-1.16, ROH §25-9.2)

§12-4 Intervention. (a) Any person or agency requesting to intervene as a party shall file a petition with the department within 10 days prior to the date set for the hearing on the appeal.

(b) The director will not accept any application submitted later than the five days before the prehearing conference.

(c) The petition to intervene shall include the following information:

- (1) The nature of the petitioner's statutory or other right to intervene as a party to the proceedings.
- (2) The nature and extent of the petitioner's interest in the proceedings, and, if the petitioner is an abutting property owner, the tax map key description of the property.
- (3) A statement of the specific issues to be raised or contested by the petitioner in the contested case hearing.
- (4) The effect of any decision in the proceeding on the petitioner's interest.

(d) If any party opposes the petition for intervention, that party may file written objections to the petition. Such objections shall be filed with the department and served on all parties and the petitioner within 48 hours of the date set for the hearing on the appeal.

(e) Applications to intervene shall be disposed of as follows:

- (1) Intervention shall be granted to an applicant who has a property interest in the property which is the subject of the appeal hearing.

(2) A petition to intervene shall be freely granted, provided that the director may deny a petition to intervene when in the director's discretion it appears that:

(A) The position of the party requesting intervention is substantially the same as the position of a party already admitted to the proceedings.

(B) The admission of additional parties will render the proceedings inefficient and unmanageable.

[Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

§12-5 Hearing. (a) The hearing shall be conducted in conformity with the applicable provisions of §§91-9, 91-10, and 91-11, Hawaii Revised Statutes.

(b) The director shall provide written notice of the hearing on an appeal to all parties to the appeal by certified mail, return receipt requested, or by publication in accordance with the provisions of §91-9.5, Hawaii Revised Statutes.

(c) Hearings shall be open to the public.

(d) All hearings shall be conducted by the director or by a hearings officer appointed by the director, who shall have the necessary powers to conduct the hearing and rule on procedural matters related thereto.

(e) At the hearing, parties shall be entitled to call witnesses, to cross-examine witnesses and to make legal arguments.

(f) The hearings officer shall have the power to exclude irrelevant, immaterial or unduly repetitious evidence.

(g) A transcript of the hearing may be obtained upon payment of a fee.  
[Eff: 6/13/1994] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2)  
(Imp: ROH §23-1.16, ROH §25-9.2)

§12-6 Evidence. (a) The admissibility of evidence at a hearing shall not be governed by the laws of evidence and all relevant oral or documentary evidence shall be admitted. Irrelevant, immaterial, cumulative, or unduly repetitious material or testimony may be excluded from evidence.

(b) Prepared Testimony. With the approval of the hearings officer, a witness may read into the record his testimony on direct examination. The witness may be subject to cross-examination.

§12-7 Order of procedure. The department's evidence shall be presented first, and shall be followed by the presentation of evidence by the party subject to the order pursuant to Chapters 18 and 20. The intervenors shall be heard in such order as the hearings officer directs.

§12-8 Subpoenas. (a) Subpoena of Witness. Any request for the issuance of a subpoena, requiring the attendance of a witness for the purpose of taking oral testimony at the hearing, shall be in writing and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only a party, the department, or the hearings officer may request the issuance of a subpoena.

(b) Subpoena of Documents. Any request for the issuance of a subpoena for the production of documents shall be in writing; shall specify the particular document or record or part thereof desired to be produced; and shall state the reasons why the production thereof is believed to be material to the issues involved.

(c) The director or hearings officer may issue a subpoena. The name and address of the witness shall be inserted in the original subpoena and a copy shall be filed in the proceeding. The subpoena shall show at whose instance the subpoena is issued. No subpoena shall be issued unless the party requesting the subpoena has complied with (a) and (b) above.

§12-9 Motions. (a) All motions made during a hearing shall be made part of the record of the proceedings.

(b) Motions to dismiss a case shall be filed at least 48 hours before the time of the hearing.

(c) All motions other than those made during a hearing shall be subject to the following:

- (1) Motions shall be made in writing, shall briefly state the relief sought, and shall be accompanied by affidavits or memoranda setting forth the grounds upon which they are based.
- (2) The moving party shall serve a copy of all motion papers on all other parties and shall, within three days thereafter, file with the director the original and four copies with certificate of service on all parties.
- (3) Answering motions, if any, shall be served on all parties; and the original and four copies, with certificate of service on all parties, shall be filed with the director within five days after service of the motion papers, unless the director directs otherwise.

[Eff: 6/13/1994; ren §12-9 **MAY 17 1998** ] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

§12-10 Arguments, briefs, and proposed findings.

(a) Any party shall be entitled, upon request made before the close of the hearing, to present oral argument.

(b) Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of facts and conclusions of law, or both, within the time fixed by the hearings officer, but not in excess of fifteen days after the close of the hearing.

(c) The hearings officer may direct oral argument or the filing of briefs or proposed findings of facts, conclusions of law, or both, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein.

(d) A request for extension of time within which to file a brief of proposed findings shall be made in writing to the hearings officer at least three days and shall be accompanied by an affidavit setting forth the grounds upon which it is based and indicating the position of the other parties with regard to the request. [Eff: 6/13/1994; ren §12-10 **MAY 17 1998** ] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

§12-11 Decision and order. (a) An appeal shall be sustained if the director finds that the order was issued based on an erroneous finding of material fact or is otherwise arbitrary and capricious, or if there are extenuating circumstances.

(b) The party prevailing in the appeal shall prepare a proposed order for adoption by the director which shall set forth the findings of fact and conclusions of law material to the director's decision. The proposed order shall be filed with the director no later than 60 days after the announcement of the decision.

(c) The final order shall be transmitted to all parties by delivery or regular mail.

(d) At any time before the final decision, the director or hearings officer, at his or her discretion or upon motion for good cause, may reopen the hearing for purposes of taking further evidence. The reopening of the hearing shall be at the sole discretion of the director or hearings officer.

[Eff: 6/13/1994; am and ren §12-11 **MAY 17 1998** ]  
(Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

SUBPART 2 SHORELINE SETBACKS

CHAPTER 13

DETERMINATION OF THE SHORELINE SETBACK LINE

§13-1	Distance from the shoreline
§13-2	Shoreline setback for new subdivisions
§13-3	Adjustment for reduced setback
§13-4	Certified shoreline survey required
§13-5	Waiver of certified shoreline survey
§13-6	Expansion of shoreline area

§13-1 Distance from the shoreline. The shoreline setback line shall be determined at the distance inland established under the shoreline setback ordinance, provided that every point of the shoreline setback line shall be at least the required distance from every point at the shoreline. [Eff: 6/13/1994] (Auth: ROH §23-1.4, HRS §91-2 ) (Imp: ROH §23-1.4, HRS §91-2)

§13-2 Shoreline setback for new subdivisions. (a) New subdivisions of existing shoreline lots shall accommodate a 60-foot shoreline setback where:

- (1) An existing lot is subdivided into two or more parcels.
- (2) Consolidation which could result in an increase in the number of dwelling units or nonresidential structures utilized for principal uses as provided in Chapter 21, Revised Ordinances of Honolulu ("The Land Use Ordinance").

(b) The following shall be exempt from the 60-foot shoreline setback requirement:

- (1) Subdivision for the purpose of adjusting lot lines, which does not increase the number of lots.

(2) Creation of easements.

[Eff: 6/13/1994] (Auth: ROH §23-1.7, HRS §91-2) (Imp: ROH §23-1.7, HRS §91-2)

§ 13-3 Adjustment for reduced setback. (a) An owner or applicant may apply for, and the director may grant a reduced setback pursuant to criteria established in Chapter 23-1.4(b).

(b) An application for adjustment may be made prior to or in conjunction with other permits. The application shall include a current certified shoreline survey and meet the requirements of §13-1 and shall also include an additional plot plan which shows dimensions of the buildable depth of the lot.

(c) Approval or denial may be given by letter or through processing of the accompanying permit, if one is submitted to the department.

[Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §23-1.4)  
(Imp: ROH §23-1.4)

§13-4 Certified shoreline survey required. (a) Except as provided in §13-5, a certified shoreline survey shall be required for an application for a subdivision, or for requests to conduct an activity or to construct a structure on a shoreline lot.

(b) A certified shoreline survey shall be valid for a period of twelve months, except that:

- (1) Where the shoreline is fixed by a manmade structure which has been approved by government agencies, the certification shall be valid for a longer period as may be determined by the board of land and natural resources; and

- (2) Where an application for a government permit or approval has been submitted with a valid certified shoreline survey, the director may allow the certified shoreline survey to be used for purposes of processing the application for a period not to exceed two years from the date of certification.

(c) Notwithstanding the above, the director may require submittal of a new certified shoreline survey when he finds that a significant change has occurred along the shoreline. [Eff: 6/13/1994] (Auth: ROH §23-1.4) (Imp: ROH §23-1.4)

§13-5 Waiver of certified shoreline survey. (a) The director may waive the requirement of a certified shoreline survey for the following:

- (1) Minor structures and activities permitted under §§15-1(3), (4), (5), (6), and (8).
- (2) A proposed structure or activity allowed under a variance, provided that the activity or construction occurs within six months of the variance decision.
- (3) Repairs to nonconforming structures.
- (4) A proposed structure or activity that will be located inland of the waiver line established as provided in (b).
- (5) When the director finds that there is an emergency, and the applicant has submitted a shoreline survey for certification.
- (6) The shoreline area is affected by an illegal shore protection structure or other structure seaward of the waiver line, and the applicant is unable to obtain shoreline certification, provided that:
  - (A) The applicant submits a shoreline survey; and

- (B) The director may determine the location of the shoreline and the shoreline setback line solely for the purpose of processing an after-the-fact variance application for the shore protection structure.
- (7) A proposed structure or activity inland of the presumed shoreline setback provided that:
- (A) The shoreline is fixed by either a structure, such as a seawall or revetment, or naturally, as in the case of a rocky or coral shoreline; and
  - (B) The applicant produces a previously certified shoreline survey; and
  - (C) Based upon reasonable evidence submitted, the director determines that the proposed structure or activity is located inland from the presumed shoreline setback line.

(b) The director may establish a waiver line which runs inland no less than 55 feet from and parallel to the shoreline at the horizontal plane for those cases where the shoreline setback line would have been normally set at 40 feet inland and parallel to the certified shoreline at the horizontal plane. In those cases where a reduced shoreline setback has been established by the director, the director may establish a waiver line inland from the shoreline at a distance no less than the sum of the reduced setback distance plus 15 feet at the horizontal plane. [Eff: 6/13/1994; am: MAY 17 1998 ]  
(Auth: HRS §91-2) (Imp: HRS §91-2)

§13-6 Expansion of shoreline area. (a) If a waiver line has been established by the director, the shoreline area means all of the area between the shoreline and the waiver line.

(b) Where the shoreline is affected by a man-made structure that has not been authorized with government agency permits required by law, if any part of the structure is on private property, then the entire structure shall be construed to be within the shoreline area.

(c) The director may extend the shoreline area to include the area between the shoreline and the mean sea level, if any portion of a man-made structure that has not been authorized with government agency permits required by law extends:

- (1) Seaward of private property boundaries; or
- (2) Seaward of the existing shoreline or a historical shoreline; or
- (3) Upon public lands along the shoreline, or upon lands subject to claim by the public.

[Eff: 6/13/1994] (Auth: ROH §23-1.4, HRS §91-2)  
(Imp: ROH §23-1.4, HRS §91-2)

CHAPTER 14

MAPPING AND MARKING OF THE SHORELINE  
AND THE SHORELINE SETBACK LINE

- §14-1 Applications on shoreline lots
- §14-2 Shoreline survey maps
- §14-3 Marking of shoreline and shoreline setback line during construction

§14-1 Application on shoreline lots. (a) All applications for an activity or construction of a structure on a shoreline lot, including building permit and grading permit applications, shall include:

- (1) An accurate plot plan, drawn to scale, showing the location of the shoreline, the shoreline setback line, the waiver line (if applicable), the property boundaries, and any existing structure within the shoreline area.
- (2) A copy of the certified shoreline survey, unless waived as provided by Chapter 13.
- (3) Elevation plans of all structures showing the shoreline setback line or waiver line as a vertical plane. If structures or activities are proposed within the shoreline area, the elevation plans shall also include the existing beach profile, and mean sea level at the horizontal plane datum.
- (4) Other relevant information as required by the director.

(b) All plans for construction of any shore protection structure shall be prepared and stamped by a structural engineer registered in the State of Hawaii.  
[Eff: 6/13/1994] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-2 Shoreline survey maps. Shoreline survey maps submitted with permit applications shall show:

- (1) The measured distance between the shoreline and the seaward property line at each side boundary intersection; and
- (2) The location of all structures located within the shoreline area.

[Eff: 6/13/1994] (Auth: HRS §91-2) (Imp: HRS §91-2)

§14-3 Marking of shoreline and shoreline setback line during construction. (a) From the time that a building permit, grading permit or director's approval for a minor activity or structure is issued, until the time that the activity or structure is completed, the applicant shall place and maintain stakes and flags at the location of the shoreline, the shoreline setback line, and the waiver line, if applicable, as shown on the approved plans.

(b) Stakes and flags shall be placed at intersections with side yard boundaries and at 30-foot intervals, and shall be clearly visible from the public lands seaward of the shoreline. [Eff: 6/13/1994]  
(Auth: HRS §91-2) (Imp: HRS §91-2)

CHAPTER 15

MINOR STRUCTURES AND ACTIVITIES

§15-1	Applicability
§15-2	Director's approval required
§15-3	Application requirements

§15-1 Applicability. (a) Minor structures and activities may be permitted in the shoreline setback, if they do not affect beach processes or artificially fix the shoreline; do not interfere with public access, public views or open space along the shoreline; and do not otherwise endanger the public health, safety or welfare.

(b) Minor structures and activities include, but are not limited to the following:

- (1) Open-work metal or open-work wood fences no more than six feet in height, with individual post foundations no more than four inches in diameter or width;
- (2) Underground potable or irrigation water and electrical conduits no more than one-inch in diameter;
- (3) Irrigation fixtures and ground lighting fixtures no more than 30 inches in height;
- (4) Tree-mounted lighting fixtures directed away from the shoreline;
- (5) Activities related to installation of trees, shrubs and ground cover, provided that they do not artificially extend the shoreline area and do not require a grading or grubbing permit;

- (6) Masonry headers or pavers needed for a border or pathway; areas of headers or pavers shall not be greater than 20 square feet and when combined with all other structures within the shoreline setback, shall comprise no more than ten percent of the area between the shoreline and shoreline setback line;
- (7) Lifeguard stands, vehicle barriers less than 30 inches in height, signs, water fountains, picnic tables, and other minor amenities within public parks;
- (8) Planters, barbecues, benches, and other structures built in place, which are no higher than 42 inches and which altogether occupy no more than 20 square feet of the shoreline area, and when combined with other structures within the shoreline setback shall occupy no more than ten percent of the area between the shoreline and the shoreline setback line;
- (9) Liquid fuel-fired torches no more than eight feet in height without underground fuel conduits;
- (10) Roof overhangs which extend no more than 30 inches into the shoreline area with less than a 30-inch vertical thickness;
- (11) Minor structures and activities which are necessary for or ancillary to continuation, but not expansion, of existing agriculture or aquaculture;
- (12) Embankment of natural beach sand which is of the same color and grain size as exists along the beach area; and
- (13) Temporary emergency stabilization of an eroding shoreline with sandbags.

(c) Minor structures shall specifically exclude roofed structures, swimming pools, and facilities related to wastewater treatment or disposal.

[Eff: 6/13/1994; am: MAY 17 1998 ] (Auth: ROH §23-1.5)  
(Imp: ROH §23-1.5)

§15-2 Director's approval required. (a) Approval by the director is required for all minor structures and activities, except for items (2), (3), (4), (5), and (7) of §15-1(b).

(b) The director may grant approval for a minor structure or activity provided that:

(1) The applicant agrees in writing to remove the structure at his own cost if the director or other governmental agency having jurisdiction determines that, due to beach erosion or other cause, the structure may affect beach processes or public access or has become located seaward of the shoreline.

(2) The applicant agrees to such other conditions as the director may impose, relating to the purpose of these regulations.

[Eff: 6/13/1994; am: MAY 17 1998 ] (Auth: ROH §23-1.5)  
(Imp: ROH §23-1.5)

§15-3 Application requirements. Applications for approval of minor structures and activities shall contain:

(1) A plot plan drawn to scale showing the location of the proposed activity or structure relative to the certified shoreline and the lot boundaries;

(2) Plans and elevations of the proposed structure drawn to scale;

§ 15-3

- (3) A completed master application form;
  - (4) Agreement to remove the structure, pursuant to §15-2(b), signed by the applicant; and
  - (5) A current certified shoreline survey.
- [Eff: 6/13/1994; am: **MAY 17 1998** ]  
(Auth: ROH §23-1.5, HRS §91-2) (Imp: ROH §23-1.5, HRS §91-2 )

CHAPTER 16

NONCONFORMING STRUCTURES

§16-1 Repair and replacement

§16-1 Repair and replacement. (a) Any nonconforming structure may be repaired upon compliance with applicable state and county requirements within the shoreline area; provided that no such nonconforming structure shall be substantially enlarged or altered to increase its nonconformity.

(b) If a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with Chapter 23, Revised Ordinances of Honolulu, and these rules.

(c) If a nonconforming structure is moved, it shall conform to the provisions of Chapter 23, Revised Ordinances of Honolulu, and these rules.  
[Eff: 6/13/1994] (Auth: ROH §23-1.6) (Imp: ROH §23-1.6)

CHAPTER 17

SHORELINE SETBACK VARIANCES

§17-1	Applicability
§17-2	Application requirements
§17-3	Compliance with Chapter 343, Hawaii Revised Statutes
§17-4	Application processing
§17-5	Public hearing
§17-6	Decision
§17-7	Reapplication
§17-8	Reconsideration
§17-9	Intervention
§17-10	Contested case hearing

§17-1 Applicability. A shoreline setback variance is required for all structures and activities within the shoreline setback, except as provided under Chapter 15 of these rules. [Eff: 6/13/1994] (Auth: ROH §23-1.10, HRS §91-2) (Imp: ROH §23-1.10, HRS §91-2)

§17-2 Application requirements. (a) A person seeking a variance from any provision of the shoreline setback ordinance or these rules may discuss the matter informally with the director or his authorized representative prior to filing an application.

- (b) The application shall include the following:
- (1) A completed master application form;
  - (2) A certified shoreline survey map, except as otherwise provided by §13-5;
  - (3) Twenty copies of plans drawn to scale of proposed and existing structures or activities, including their location on the certified shoreline survey map if it is required;

- (4) Color photographs showing the existing conditions and marked to show the location of the proposed structures and activities;
- (5) A written description of the materials to be used and the purpose, timing, and valuation of proposed structures and activities within the shoreline area;
- (6) If a shoreline protective structure is proposed to fix the shoreline, an evaluation of the design of the structure by a registered professional structural engineer, and a discussion of practicable alternatives to the proposed structures and activities;
- (7) If the applicant claims that the footing or toe of a structure proposed to fix the shoreline will be anchored on rock, soil borings or other conclusive evidence of the depth to rock beneath a sedimentary shoreline;
- (8) A completed environmental assessment and finding of no significant impact or environmental impact statement and acceptance report filed by the director pursuant to Chapter 343, Hawaii Revised Statutes, if applicable; and
- (9) The required application fee, except that this fee shall be waived for public agency projects.

(c) The director shall notify the applicant in writing whether the application is complete or incomplete. If the director determines that an application is incomplete, then the director's notice shall inform the applicant of the specific information or requirements necessary to complete the application.

[Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: HRS §91-2)  
(Imp: HRS §91-2)

§17-3 Compliance with Chapter 343, Hawaii Revised Statutes. (a) The director shall determine the applicability of the State of Hawaii Environmental Impact Statement (EIS) law which may require the applicant to submit an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes, and Chapter 200 Title 11, Administrative Rules of the State of Hawaii Department of Health.

(b) The director shall further determine whether a finding of no significant impact is sufficient to process an application, or whether an environmental impact statement shall be required, pursuant to Chapter 343, Hawaii Revised Statutes, and Chapter 200 of Title 11, Administrative Rules of the State of Hawaii Department of Health.

(c) The director shall, if requiring the applicant to prepare an environmental assessment, issue a finding of no significant impact, or if applicable, require an environmental impact statement with an application within the shoreline area for any of the following:

(1) Shore protection structures;

(2) Other structures and activities.

[Eff: 6/13/1994; am: **MAY 17 1998** ]  
(Auth: HRS §§91-2, HRS 343-5) (Imp: HRS §§91-2, 343-5)

§17-4 Application processing. (a) Upon satisfaction of Chapter 343, Hawaii Revised Statutes requirements and submittal of required application material, the director shall accept the application for processing and:

(1) Give notice of the application to the property owners within a 300-foot radius of the project site, to the affected neighborhood boards and community associations and to other persons who have requested notice;

- (2) Schedule a public hearing within 45 days of acceptance of the application, unless the hearing has been waived as provided by §17-5.

(b) The director shall act on the application within 45 days of the close of the public hearing, unless the public hearing has been waived, in which case the director shall act within 45 days of the date on which the public notice of the application was published.

(c) When simultaneously processing a variance application and a major special management area use permit application, the director shall:

- (1) provide notice of both applications;
- (2) hold a public hearing on both applications; and
- (3) transmit proposed findings and recommendations on both applications to the city council within the period set by ordinance.

[Eff: 6/13/1994; am: **MAY 17 1998** ]  
(Auth: HRS §91-2) (Imp: HRS §91-2)

§17-5 Public hearing. (a) The director shall hold a public hearing on each variance application, except that the director may waive the hearing on variances for the following:

- (1) Stabilization of shoreline erosion involving the movement of sand entirely on public lands;
- (2) Application for shore protection where a legal habitable structure is at risk of immediate damage from shoreline erosion as determined by the director;
- (3) Other structures or activities; provided that no person or agency has requested a public hearing within 25 calendar days after public notice of the application.

(b) The director shall notify all property owners within a 300-foot radius of the project site of the decision to waive the public hearing. If, within 25 days of this notification any property owner requests that a public hearing be held, the director shall schedule a public hearing.

(c) At least 20 days prior to the public hearing, the director shall publish notice of the public hearing in a newspaper of general circulation in the city. The director shall also notify the applicant, any person or agency that requested the public hearing, all property owners within a 300-foot radius of the project site, and any other person(s) who requested notice at least 20 days before the public hearing.

(d) The public hearing shall be conducted as provided by Part 1 Rules of Practice and Procedure, §5-2 through §5-4.

[Eff: 6/13/1994; am: **MAY 17 1998** ]

(Auth: ROH §23-1.11, HRS §91-2) (Imp: ROH §23-1.11, HRS §91-2)

§17-6 Decision. A variance application shall either be denied, approved, or approved with conditions. A decision and order on a variance application shall be based on and attached to written findings of fact and conclusions of law. If a variance is approved, then the decision and order shall state the terms of the variance and the deadline for compliance with conditions on the variance. The director shall provide a copy of the findings of facts, conclusions of law, and decision and order to the applicant and all persons who requested a copy.

[Eff: 6/13/1994] (Auth: ROH §23-1.10) (Imp: ROH §23-1.10)

§17-7 Reapplication. When an application has been denied or withdrawn, the director shall not accept an application that is substantially the same on the same property until:

- (1) All violations for which the application requests a variance have been corrected; and

- (2) 365 days have elapsed from the last date the application was withdrawn or denied.  
[Eff: 6/13/1994] (Auth: HRS §91-2) (Imp: HRS §91-2)

**§17-8 Reconsideration.** The director may reconsider and subsequently rescind a previous decision and issue a new decision, as provided by Part 1 Rules of Practice and Procedure, Chapter 4. [Eff: 6/13/1994]  
(Auth: HRS §91-2, RCH §4-105) (Imp: HRS § 91-2, RCH §4-105)

**§17-9 Intervention.** (a) Any person or agency may petition the director to become a party to the shoreline setback variance procedure. A petition under this Chapter shall be served on the director no later than 10 days prior to the date set for public hearing, or if the director has waived the public hearing, the petition shall be served on the director within 25 days after the notification of waiver of public hearing.

(b) The request shall include:

- (1) The name of the person(s) requesting to become a party, a mailing address, and a telephone number.
- (2) Identification of the property for which the shoreline setback variance is being sought by street address and tax map key number.
- (3) The interest of the person(s) in the property or, if the petitioner has no property interest, how the petitioner is adversely affected by the variance.

(c) A party opposing the request to intervene must file written opposition no later than 48 hours before the date set to hear the request to intervene.

(d) Petitions to intervene shall be disposed of in the same manner as §12-4(e).

§17-10 Contested case hearing. (a) Any party to the shoreline setback variance may request the director to hold a contested case hearing pursuant to §§91-9, 91-10, 91-11, 91-12 and 91-13, Hawaii Revised Statutes, prior to arriving at a decision on the variance. The petitioner and the department may in every case appear as parties to the proposed action.

(b) The request to hold a contested case hearing shall be made no later than 10 days prior to the date set for public hearing, or if the director has waived the public hearing, the petition shall be served on the director within 25 days after the notification of waiver of public hearing.

(c) A party opposing the request for a contested case hearing must file written opposition no later than 48 hours before the date set to hear the request for a contested case hearing.

(d) A request for a contested case hearing shall be freely granted, except where the director finds that the request is capricious or made to harass a party or the department.

(e) The director at the director's discretion may proceed with the public hearing and hold the contested case at a later time or continue the public hearing to the same time as the contested case hearing.

(f) Public Testimony. Any witness who is not a witness aligned under any party and who would not be called by any party as a witness in the contested case hearings shall present evidence during the public hearing portion of the proceedings. All other witnesses shall present evidence only during the contested case portion of the hearing, except that the hearings officer may allow a witness to testify in both proceedings if the witness is to provide substantially different testimony.

(g) Order of Procedure. The applicant shall begin the proceedings and have an opportunity to respond to any evidence presented. The presiding officer may request information from the department, and the intervenors shall be heard in such order as the presiding officer directs.

(h) Any party may request that a subpoena be issued pursuant to §12-8.

(i) Any party may by written demand, request of any other party to the proceedings, the full disclosure of the identity of all witnesses to be called by the other party and all exhibits to be introduced by the other party at the hearing. The director at the director's discretion may also order that the parties exchange a list of exhibits and witnesses prior to the hearing. The failure to comply with a disclosure request in a timely manner may result in the evidence or witness not being permitted to be presented at the hearing.

(j) The director at the director's discretion may hold a prehearing conference for the purposes of arriving at settlement or clarification of the issues, and to the extent possible, an agreement on facts, matters, or procedures as may facilitate and expedite the hearing or adjudication.

(k) All motions shall comply with §12-9.

(l) The admissibility of evidence at the hearing shall not be governed by the laws of evidence and all relevant oral or documentary evidence shall be admitted. Irrelevant, immaterial, cumulative, or unduly repetitious material or testimony shall not be admitted into evidence.

(m) Upon completion of the taking of evidence, the hearings officer shall prepare a report setting forth proposed findings of fact and conclusions of law, the reasons therefor and recommended action, and shall submit the report to the director. The hearings officer shall cause a copy of the report to be served upon all parties to the contested case hearing.

(n) Any party to the contested case hearing may, within 10 working days after service of the report and recommendations by the hearings officer, file with the director exceptions, objections or support of the recommendations.

(o) At any time after 10 days after the report and recommendation have been served on all parties to the contested case, the director may make a decision in accordance with Rule §17-6.

(p) At any time before making the final decision, the director or hearings officer, at his or her discretion or upon motion for good cause, may reopen the hearing for purposes of taking further evidence. The reopening of the hearing shall be at the sole discretion of the director or hearings officer.

[Eff: **MAY 17 1998** ] (Auth: ROH §§23-1.14, 23-1.16, ROH §25-9.2) (Imp: ROH §23-1.16, ROH §25-9.2)

CHAPTER 18

ENFORCEMENT: ADMINISTRATIVE FINES FOR SHORELINE  
SETBACK VIOLATIONS

- §18-1 Purpose
- §18-2 Issuance of order
- §18-3 Time period for compliance
- §18-4 Administrative fines
- §18-5 Fine schedule
- §18-5.01 Request for review of civil fines
- §18-6 Addition of unpaid civil fines to taxes,  
fees and charges collected by the city
- §18-7 Other legal remedies

§18-1 Purpose. The express purpose of the civil fines program shall be to enforce compliance with the provisions of the Shoreline Setback Ordinance and facilitate corrections to violations. The civil fines program is not intended to be viewed as a source of revenue for the city. Therefore, within the parameters provided by this chapter, the director shall be entitled to assert appropriate flexibility in the administration of the civil fines program.

[Eff: 6/13/1994] (Auth: ROH §§23-1.13, 23-1.14, 23-1.16)  
(Imp: ROH §23-1.16)

§18-2 Issuance of order. (a) The director may issue a notice of violation and order upon determining that there is a violation, or upon receipt of a notice of violation and documentation of the violation from the building department and/or the department of public works.

(b) The director shall have the order served upon the violator; which may include the fee owner, leaseholder, subleaseholder or other assignee, tenant, contractor or other person(s) responsible for the violation or with an interest in the property where a violation occurred. Service shall be in person or by certified mail, return receipt requested.

(c) The order shall state separately each violation, the fine assessed for each violation, the date and method of payment of the fine, and shall inform the violator that the director may add any unpaid civil fine to certain taxes, fees and charges collected by the city.

(d) The order shall also state what corrective action is necessary, the date by which such action must be completed to avoid daily fines, and the amount of the daily fine, should a daily fine be assessed.

(e) The order shall advise the violator that the order shall become final 30 calendar days after the date of its mailing, delivery, or publication.

(f) Any person subject to an order pursuant to this rule may request a hearing before the director. The request for a hearing shall be considered timely if a written request is delivered or mailed and post marked (dated) to the director within 30 calendar days of the date of mailing, delivery, or publication of the order. The request for a hearing shall not stay any provision of the order.

(g) Any hearing requested under subsection (f) shall be conducted in accordance with the provisions of Chapter 91, Hawaii Revised Statutes and Chapter 12 of these rules. [Eff: 6/13/1994] (Auth: ROH §23-1.14)  
(Imp: ROH §§23-1.14, 23-1.16)

§18-3 Time period for compliance. When specifying the corrective action to be taken and a reasonable deadline to correct the violation, the director may consider the following:

- (1) The type and degree of the violation, whether it is a recurring violation, and the number of violations cited in the order.
- (2) Potential threat to human health and safety.

- (3) Time previously given for correction by a notice of violation issued by the building department and/or the department of public works.
- (4) The intent of the violator to comply, if it has been expressed to the director.
- (5) Procedural requirements for obtaining a permit or authorization to carry out corrective action.
- (6) The complexity of the corrective action required, including construction requirements and the legal prerogatives of landlords and tenants.
- (7) Any other circumstances beyond the control of the violator.

[Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §23-1.14)  
(Imp: ROH §§23-1.14, 23-1.16)

§18-4 Administrative fines. (a) Resolution of a violation includes correction of the violation and payment of civil fines to the city in the amount prescribed by the director in accordance with the schedule given in §18-5 and subsections (b) through (f) below.

(b) In specifying the amount of the fine, the director shall consider the following:

- (1) The nature and degree of the violation;
- (2) Whether the violation involves a threat to public health and safety;
- (3) Whether safe public lateral access along the shoreline has been inhibited;
- (4) Whether natural beach processes have been adversely impacted or put at increased risk;

- (5) Whether there is an increased risk of structures failing and becoming loose rocks or rubble on public property;
- (6) Whether there is an adverse impact on public views to, from, and along the shoreline;
- (7) Whether there are multiple violations;
- (8) Whether it is a recurring violation as defined herein.

(c) In general, the fine for an initial violation shall be the lowest for that type of violation; provided that the fine for an initial violation shall be substantially higher if the violation may have a severe adverse impact on coastal resources (e.g., the discharge or deposit of waste material, impact on a registered historic site) or if it affects a large area within the coastal zone.

(d) If the violation recurs, then the fine may be doubled for each recurrence, up to the maximum of \$10,000. Daily fines may be doubled for each recurrence, up to a maximum of \$1000 per day.

(e) The fine assessed by the order is payable whether or not correction of the violation is completed before or after the order becomes final. If the order is appealed, the administrative fines imposed shall not be collected until after the completion of the appeal proceedings.

(f) When a violation is not corrected by the deadline established in the order, the director may assess an additional fine for each day during which the violation remains uncorrected.

[Eff: 6/13/1994; am: **MAY 17 1998** ]  
(Auth: ROH §§23-1.13, 23-1.14, 23-1.16) (Imp: ROH §23-1.16)

§18-5 Fine schedule. Initial and daily fines for shoreline setback violations shall be as shown in the following table:

Schedule of Civil Monetary Fines for Shoreline Setback Violations.

Type of Violation	Initial Fine	Daily Fine
(a) Development for which no shoreline variance has been granted:		
1. Development inhibiting or eliminating safe lateral access to and along the shoreline	\$1000 - 10,000	\$100 - 1000
2. Development increasing the risk of adverse impacts on beach processes including, but not limited to the moving of sand from one location seaward of the shoreline	\$1000 - 10,000	\$100 - 1000
3. Development increasing the risk of structures failing and becoming loose rocks or rubble on public property	\$5000 - 10,000	\$200 - 1000
4. Development artificially fixing the shoreline	\$2000 - 10,000	\$100 - 1000
5. Development diminishing the size of any public beach	\$1000 - 10,000	\$100 - 1000
6. Development destabilizing the size of any public beach	\$2000 - 10,000	\$100 - 1000
7. Development increasing adverse impacts on public views to, from, and along the shoreline	\$500 - 10,000	\$50 - 1000
8. All other unpermitted development	\$500 - 10,000	\$50 - 1000
(b) Failure to comply with variance approval conditions	\$1000 - 10,000	\$100 - 1000

[Eff: 6/13/1994] (Auth: ROH §§23-1.13, 23-1.14, 23-1.16)  
 (Imp: ROH §23-1.16)

§18-5.01 Request for review of civil fines. (a) At the completion of an appeal in which the enforcement action is affirmed and upon correction of the violation, the violator may request the director to review the civil fines which have accrued during the course of the appeal proceedings, and to determine whether it is appropriate to adjust the total amount of the accrued fines.

(b) In determining the appropriateness of the fine, the director may consider the following: nature and egregiousness of the violation, duration of the violation, number of recurring and other similar violations, effort taken by the violator to correct the violation, degree of involvement in causing or continuing the violation, reasons for any delay in the completion of the appeal, and other extenuating circumstances.

(c) After completion of a review pursuant to subsections (a) and (b), the amount of civil fine that the director determines to be appropriate, including the initial civil fine and any accrued daily civil fines, shall immediately become due and collectable following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrued civil fine prior to correcting the violation, shall become due and collectable following reasonable notice to the violator.

(d) After completion of this review, the civil fine which is imposed by administrative order is subject only to judicial review, notwithstanding any provisions for administrative review under the Revised Charter of the City & County of Honolulu, 1973 (1994 Edition), as amended.

[Eff: **MAY 17 1998** ] (Auth: HRS §46-1.5) (Imp: HRS §46-1.5)

§18-6 Addition of unpaid civil fines to taxes, fees and charges collected by the city. (a) An unpaid civil fine which remains due and owing after all rights to administrative appeal have been exhausted, may then be added by administrative action of the director to any taxes, fees and charges collected by the city, as provided by this section.

(b) The director shall be responsible for the addition of an unpaid civil fine to taxes, fees and charges collected by the city.

(c) When an unpaid civil fine has been added to taxes, fees or charges collected by the city, the director shall yet maintain the authority to adjust the amount of the civil fine as a means of resolving the violation, except that if attachment is made to real property taxes, the civil fines cannot be reduced through settlement. In the event the director does adjust the amount of the unpaid civil fine, or agrees to a specified payment schedule, then the director shall notify the collecting agency, in a timely manner, in writing of the arrangement.

(d) The collecting agency with direct authority for the collection of a particular tax, fee or charge shall be responsible for the collection of an unpaid civil fine after its addition to the particular tax, fee, or charge; however, when requested by the collecting agency, the director may take responsibility for the collection of the unpaid civil fine, which may reflect an adjustment (reduction) of the amount of the unpaid civil fine, or adoption of a payment schedule.

(e) Once the director has added an unpaid civil fine to taxes, fees or charges collected by the city, the unpaid civil fine shall be immediately due and owing. The fine shall be collected in the same manner as the taxes, fees or charges to which it has been added. Further, any licenses, permits, certifications, or other approvals associated with such taxes, fees and charges shall be withheld until the violation is corrected and a resolution of the unpaid civil fine has been made. Civil fines attached to real property taxes are subject to late fee penalties and interest.

(f) The director may add unpaid civil fines to the following taxes, fees and charges collected by the city:

List of Taxes, Fees and Charges Collected by the City to which Unpaid Civil Fines May be Added

Collecting Agency	Eligible Tax, Fee or Charge
Building Department	Building and demolition permit fees
	Sign permit fee
	Building code variance application fee
	Relocation permit fee
Finance Department	Motor vehicle registration fee and vehicle weight tax
	Drivers license renewal fee
	Business license fee
	Real property tax
Liquor Commission	Liquor license and renewal fees
Department of Land Utilization	All Land Use Ordinance permit and other application fees, including application fees for a zone map change
	Special management area use permit application fee
	Shoreline variance application fee

Collecting Agency	Eligible Tax, Fee or Charge
	Subdivision approval application fee
	Land Use Ordinance variance application fee
Department of Land Utilization	Park dedication fee
	Special use permit (involving 15 acres or less and not in the Conservation District) application fee
Planning Department	General plan amendment application fee
	Development plan amendment fee
	State land use district boundary amendment (involving 15 acres or less and not in the Conservation District) application fee
Department of Public Works	Grading, excavation, grubbing and trenching permit application fees
	Refuse collection fee
	Refuse disposal fee

(g) The director shall prepare and maintain written standard operating procedures (SOP) for adding unpaid civil fines to the taxes, fees and charges listed in subsection (f) of this section, as provided by §10-3.01(g) (Part 1, Department of Land Utilization Rules of Practice and Procedure).

(h) The director shall not add an unpaid civil fine to any taxes, fees or charges collected by the city unless a civil fine has been outstanding for at least 90 days.

(i) The director shall provide written notification to any person(s) directly affected when an unpaid civil fine is to be added to any taxes, fees or charges collected by the city. Service shall be in person or by certified mail, return receipt requested. The notification shall precede the actual addition of an unpaid civil fine to any taxes, fees or charges by at least 14 days. The written notification shall include at least the following:

- (1) The particular taxes, fees or charges to which the unpaid civil fines are to be added.
- (2) The effective date for the addition of the unpaid civil fine to any taxes, fees or charges.
- (3) The initial amount to be added to any taxes, fees or charges.
- (4) A statement to the effect that:
  - (A) As of the effective date, the unpaid civil fine added to the taxes, fees or charges shall be immediately due and owing in the same manner as the taxes, fees or charges to which the unpaid civil fine has been added.
  - (B) The violator must correct the violation and pay the unpaid civil fine in order to receive any license, permit, certification, or other approval or clearance associated with such taxes, fees or charges.

(C) The director, or the director's designated representative, has the authority to accept a settlement proposal, which shall involve the correction of the violation, and may include an adjustment of the amount of the unpaid civil fine or a payment schedule. If civil fines are attached to real property taxes, the amount attached cannot be reduced through settlement.

(j) The amount of an unpaid civil fine added to any taxes, fees or charges shall be equal to the fine outstanding as of the effective date of the addition. However, daily civil fines shall continue to accrue until the violation associated with a fine has been fully corrected, as shown by appropriate evidence or inspection.

(k) Upon correction of a violation and payment of the outstanding civil fine which has been added to any taxes, fees or charges collected by the city, the director or his designated representative shall:

- (1) Immediately issue to the violator or the violator's representative a certificate of compliance which shall release the violator from any further liability for the civil fine. This certificate shall be considered by all agencies of the city and their representatives as sufficient evidence that the violation has been corrected, and that the unpaid civil fine has been resolved.
- (2) Notify, by written means, all affected collecting agencies in a timely manner that the unpaid civil fine has been resolved.
- (3) In the event a tax, fee or charge has been electronically flagged, the flag shall be removed.

(1) This method for the collection of civil fines shall be in addition to any other procedures for collection available to the city by ordinance, rule or regulation, or to any court of competent jurisdiction. [Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §23-1.13, Ord. 93-109) (Imp: ROH §23-1.13, Ord. 93-109)

§18-7 Other legal remedies. (a) The director may pursue any other legal means to correct the violation, as provided by Chapter 23, Revised Ordinances of Honolulu.

(b) An unpaid civil fine may become a lien and be attached to real property after notice and appeal procedures have been observed as provided by this chapter or other statute, ordinance or rule as may apply. An unpaid civil fine added to taxes, fees or charges collected by the city, as provided by this chapter, may become a lien against the real property associated with the taxes, fees or charges, as provided by appropriate law or rule. [Eff: 6/13/1994] (Auth: ROH §23-1.14, Ord. 93-109) (Imp: ROH §23-1.14, Ord. 93-109)

SUBPART 3 SPECIAL MANAGEMENT AREAS

CHAPTER 20

ENFORCEMENT: ADMINISTRATIVE FINES FOR SPECIAL  
MANAGEMENT AREA VIOLATIONS

§20-1	Purpose
§20-2	Issuance of order
§20-3	Time period for compliance
§20-4	Administrative fines
§20-5	Fine schedule
§20-5.01	Request for review of civil fines
§20-6	Addition of unpaid civil fines to taxes, fees and charges collected by the city
§20-7	Other legal remedies

§20-1 Purpose. The express purpose of the civil fines program shall be to enforce compliance with the provisions of the Special Management Area Ordinance and facilitate corrections to violations. The civil fines program is not intended to be viewed as a source of revenue for the city. Therefore, within the parameters provided by this chapter, the director shall be entitled to assert appropriate flexibility in the administration of the civil fines program. [Eff: 6/13/1994] (Auth: ROH §25-8.1) (Imp: ROH §25-8.1, HRS §91-2)

§20-2 Issuance of order. (a) The director may issue a notice of violation and order upon determining that there is a violation, or upon receipt of a notice of violation and documentation of the violation from the building department and/or the department of public works.

(b) The director shall have the order served upon the violator; which may include the fee owner, leaseholder, subleaseholder or other assignee, tenant contractor or other person(s) responsible for the violation or with an interest in the property where a violation occurred. Service shall be in person or by certified mail, return receipt requested.

(c) The order shall state separately each violation, the fine assessed for each violation, the date and method of payment of the fine, and shall inform the violator that the director may add any unpaid civil fine to certain taxes, fees and charges collected by the city.

(d) The order shall also state what corrective action is necessary, the date by which such action must be completed to avoid daily fines, and the amount of the daily fine, should a daily fine be assessed.

(e) The order shall advise the violator that the order shall become final 30 days after the date of its mailing, delivery or publication.

(f) Any person subject to an order pursuant to this rule may request a hearing before the director. The request for a hearing shall be considered timely if a written request is delivered or mailed and post marked (dated) to the director within 30 calendar days of the date of mailing, delivery, or publication of the order. The request for a hearing shall not stay any provision of the order.

(g) Any hearing requested under subsection (f) shall be conducted in accordance with the provisions of Chapter 91, Hawaii Revised Statutes, and Chapter 12 of these rules. [Eff: 6/13/1994] (Auth: ROH §25-9.1) (Imp: ROH §25-9.1, HRS §91-2)

§20-3 Time period for compliance. When specifying the corrective action to be taken and a reasonable deadline to correct the violation, the director may consider the following:

- (1) The type and degree of the violation, whether it is a recurring violation, and the number of violations cited in the order.
- (2) Potential threat to human health and safety.
- (3) Time previously given for correction by a notice of violation issued by the building department and/or the department of public works.

- (4) The intent of the violator to comply, if it has been expressed to the director.
- (5) Procedural requirements for obtaining a permit or authorization to carry out corrective action.
- (6) The complexity of the action required, including construction requirements and the legal prerogatives of landlords and tenants.
- (7) Any other circumstances beyond the control of the violator.

[Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §25-9.1)  
(Imp: ROH §25-9.1, HRS §91-2)

§20-4 Administrative fines. (a) Resolution of a violation includes correction of the violation and payment of civil fines to the city in the amount prescribed by the director in accordance with the schedule given in §20-5 and subsection (b) through (f) below.

(b) In specifying the amount of the fine, the director shall consider the following:

- (1) The nature and the degree of the violation;
- (2) Whether the violation involves a threat to public health and safety;
- (3) Whether there is income derived from the violation;
- (4) Whether there are multiple violations;
- (5) Whether it is a recurring violation as defined herein.

(c) In general, the fine for an initial violation shall be the lowest for that type of violation; provided that the fine for an initial violation shall be substantially higher if the violation may have a severe adverse impact (e.g., the discharge or deposit of hazardous wastes, impact on a registered historic site) or if it affects a large area within the coastal zone.

(d) If the violation recurs, then the fine may be doubled for each recurrence, up to the maximum of \$10,000. Daily fines may be doubled for each recurrence, up to a maximum of \$500 per day.

(e) The fine assessed by the order is payable whether or not correction of the violation is completed before or after the order becomes final. If the order is appealed, the administrative fines imposed shall not be collected until after the completion of the appeal proceedings.

(f) When a violation is not corrected by the deadline established in the order, the director may assess an additional fine for each day during which the violation remains uncorrected.  
[Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §25-9.1)  
(Imp: ROH §25-9.1, HRS §91-2)

§20-5 Fine schedule. Initial and daily fines for special management area violations shall be as shown in the following table:

Schedule of Civil Monetary Fines for Special Management Area Violations.

Type of Violation	Fine	Daily Fine
(a) Development for which no special management area use permit has been granted:		
1. Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, lagoon wetland or stream; development affecting any beach or other area usable for public recreation, public access to any tidal or submerged land, beach or stream within the SMA, existing or potential fisheries, fishing grounds, or wildlife habitat.	\$5,000 - 10,000	\$200 - 500
2. Development causing erosion to any beach, dune system, or coastal landform or siltation of any stream, wetland or coastal waters; development affecting water quality, any historical or archaeological resource, including subsurface remains, any coastal view, open space or scenic resource; discharge of any liquid waste; deposit of any solid waste.	\$1,000 - 10,000	\$100 - 500
3. Development affecting existing or potential agricultural uses of land.	\$ 500 - 10,000	\$50-500
4. All other unpermitted development.	\$ 500 - 10,000	\$100 - 500
(b) Failure to comply with permit conditions.	\$1,000 - 10,000	\$100 - 500

[ Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §25-9.1)  
 (Imp: ROH §25-9.1, HRS §91-2)

§20-5.01 Request for review of civil fines. (a) At the completion of an appeal in which the enforcement action is affirmed and upon correction of the violation, the violator may request the director to review the civil fines which have accrued during the course of the appeal proceedings, and to determine whether it is appropriate to adjust the total amount of the accrued fines.

(b) In determining the appropriateness of the fine, the director may consider the following: nature and egregiousness of the violation, duration of the violation, number of recurring and other similar violations, effort taken by the violator to correct the violation, degree of involvement in causing or continuing the violation, reasons for any delay in the completion of the appeal, and other extenuating circumstances.

(c) After completion of a review pursuant to subsections (a) and (b), the amount of civil fine that the director determines to be appropriate, including the initial civil fine and any accrued daily civil fines, shall immediately become due and collectable following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrued civil fine prior to correcting the violation, shall become due and collectable following reasonable notice to the violator, upon completion of all appeal proceedings.

(d) After completion of this review, the civil fine which is imposed by administrative order is subject only to judicial review.

[Eff: **MAY 17 1998** ] (Auth: HRS §46-1.5) (Imp: HRS §46-1.5)

§20-6 Addition of unpaid civil fines to taxes, fees and charges collected by the city. (a) An unpaid civil fine which remains due and owing after all rights to administrative appeal have been exhausted, may then be added by administrative action of the director to taxes, fees and charges collected by the city, as provided by this section.

(b) The director shall be responsible for the addition of any unpaid civil fines to taxes, fees and charges collected by the city.

(c) When an unpaid civil fine has been added to taxes, fees or charges collected by the city, the director shall yet maintain the authority to adjust the amount of the civil fine as a means of resolving the violation, except that if attachment is made to real property taxes, the civil fines cannot be reduced through settlement. In the event the director does adjust the amount of the unpaid civil fine, or agrees to a specified payment schedule, then the director shall notify the collecting agency, in a timely manner, in writing of the arrangement.

(d) The collecting agency with direct authority for the collection of a particular tax, fee or charge shall be responsible for the collection of an unpaid civil fine after its addition to the particular tax, fee, or charge; however, when requested by the collecting agency, the director may take responsibility for the collection of the unpaid civil fine, which may reflect an adjustment (reduction) of the amount of the unpaid civil fine, or adoption of a payment schedule.

(e) Once the director has added an unpaid civil fine to taxes, fees or charges collected by the city, the unpaid civil fine shall be immediately due and owing. The fine shall be collected in the same manner as the taxes, fees or charges to which it has been added. Further, any licenses, permits, certifications or other approvals associated with such taxes, fees and charges shall be withheld until the violation is corrected and a resolution of the unpaid civil fine has been made. Civil fines attached to real property taxes are subject to late fee penalties and interest.

(f) The director may add unpaid civil fines to the following taxes, fees and charges collected by the city:

List of Taxes, Fees and Charges Collected by the City to which Unpaid Civil Fines May be Added

Collecting Agency	Eligible Tax, Fee or Charge
Building Department	Building and demolition permit fees
	Sign permit fee
	Building code variance application fee
	Relocation permit fee
Finance Department	Motor vehicle registration fee and vehicle weight tax
	Drivers license renewal fee
	Business license fee
	Real property tax
Liquor Commission	Liquor license and renewal fees
Department of Land Utilization	All Land Use Ordinance permit and other application fees, including application fees for a zone map change
	Special management area use permit application fee
	Shoreline variance application fee

Collecting Agency	Eligible Tax, Fee or Charge
	Subdivision approval application fee
	Land Use Ordinance variance application fee
Department of Land Utilization	Park dedication fee
	Special use permit (involving 15 acres or less and not in the Conservation District) application fee
Planning Department	General plan amendment application fee
	Development plan amendment application fee
	State land use district boundary amendment (involving 15 acres or less and not in the Conservation District) application fee
Department of Public Works	Grading, excavation, grubbing and trenching permit application fees
	Refuse collection fee
	Refuse disposal fee

(g) The director shall prepare and maintain written standard operation procedures (SOP) for adding unpaid civil fines to the taxes, fees and charges listed in subsection (f) of this section, as provided by §10-3.01(g) (Part 1, Department of Land Utilization Rules of Practice and Procedure).

(h) The director shall not add an unpaid civil fine to any taxes, fees or charges collected by the city unless a civil fine has been outstanding for at least 90 days.

(i) The director shall provide written notification to any person(s) directly affected when an unpaid civil fine is to be added to any taxes, fees or charges collected by the city. Service shall be in person or by certified mail, return receipt requested. The notification shall precede the actual addition of an unpaid civil fine to any taxes, fees or charges by at least 14 days. The written notification shall include at least the following:

- (1) The particular taxes, fees or charges to which the unpaid civil fines are to be added.
- (2) The effective date for the addition of the unpaid civil fine to any taxes, fees or charges.
- (3) The initial amount to be added to any taxes, fees or charges.
- (4) A statement or statements to the effect that:
  - (A) As of the effective date, the unpaid civil fine added to the taxes, fees or charges shall be immediately due and owing in the same manner as the taxes, fees or charges to which the unpaid civil fine has been added.
  - (B) The violator must correct the violation and pay the unpaid civil fine in order to receive any license, permit, certification or other approval or clearance associated with such taxes, fees or charges.

(C) The director, or the director's designated representative, has the authority to accept a settlement proposal, which shall involve the correction of the violation, and may include an adjustment of the amount of the unpaid civil fine or a payment schedule. If civil fines are attached to real property taxes, the amount attached cannot be reduced through settlement.

(j) The amount of an unpaid civil fine added to any taxes, fees or charges shall be a fixed sum, equal to the fine outstanding as of the effective date of the addition. However, daily civil fines shall continue to accrue until the violation associated with a fine has been fully corrected, as shown by appropriate evidence or inspection.

(k) Upon full correction of a violation and payment of the outstanding civil fine which has been added to any taxes, fees or charges collected by the city, the director or his designated representative shall:

- (1) Immediately issue to the violator or the violator's representative a certificate of compliance which shall release the violator from any further liability for the civil fine. This certificate shall be considered by all agencies of the city, and their representatives, as sufficient evidence that the violation has been corrected, and that the unpaid civil fine has been resolved.
- (2) Notify, by written means, all affected collecting agencies in a timely manner that the unpaid civil fine has been resolved.
- (3) In the event a tax, fee or charge has been electronically flagged, the flag shall be removed.

(1) This method for the collection of civil fines shall be in addition to any other procedures for collection available to the city by ordinance, rule or regulation, or to any court of competent jurisdiction. [Eff: 6/13/1994; am: **MAY 17 1998** ] (Auth: ROH §25-9.1, Ord. 93-109) (Imp: ROH §25-9.1, Ord. 93-109)

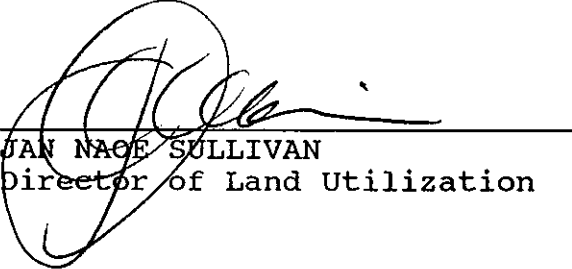
§20-7 Other legal remedies. (a) The director may pursue any other legal means to correct the violation, as provided by Chapter 23, Revised Ordinances of Honolulu.

(b) An unpaid civil fine may become a lien and be attached to real property after notice and appeal procedures have been observed as provided by this chapter or other statute, ordinance or rule as may apply. An unpaid civil fine added to taxes, fees or charges collected by the city, as provided by this chapter, may become a lien against the real property associated with the taxes, fees or charges, as provided by appropriate law or rule. [Eff: 6/13/1994] (Auth: ROH §25-9.1, Ord. 93-109) (Imp: ROH §25-9.1, Ord. 93-109 )

Part 2 of the Rules of the Department of Land Utilization, Rules Relating to Shoreline Setbacks and the Special Management Area, was amended following a public hearing held on February 13, 1998, notice of which was published in the Honolulu Star-Bulletin on January 8, 1998.

These amended rules shall become effective upon their approval by the Mayor of the City and County of Honolulu and ten days after filing with the City Clerk.

DEPARTMENT OF LAND UTILIZATION  
CITY AND COUNTY OF HONOLULU



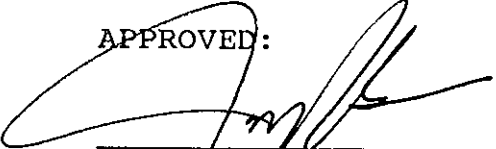
JAN NAE SULLIVAN  
Director of Land Utilization

APPROVED AS TO FORM:



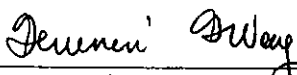
Deane Long  
Deputy Corporation Counsel  
Date 4-13-98

APPROVED:



JEREMY HARRIS, Mayor  
City and County of Honolulu  
Date May 6, 1998

RECEIVED this 7th day of  
May, 1998.



Genevieve G. Wong  
City Clerk  
GENEVIEVE G. WONG