

DEPARTMENT OF PLANNING AND PERMITTING

PART 1 RULES OF PRACTICE AND PROCEDURE

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DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

ADOPTION OF CHAPTER 1.1
AMENDMENTS TO CHAPTERS 1, 3, 5, 6, 8, 9 AND 10,
PART 1 RULES OF PRACTICE AND PROCEDURE
(Adopted October 8, 1999)

SUMMARY

1. §1-1 is amended
2. §1-2 is amended
3. Chapter 1.1 is added
4. §3-5 is amended
5. §5-4 is amended
6. §6-2 is amended
7. §8-2 is amended
8. §9-2 is amended
9. §10-1.01 is amended
10. §10-3.01 is amended

DEPARTMENT OF PLANNING AND PERMITTING
PART 1 RULES OF PRACTICE AND PROCEDURE
CHAPTER 1

DEFINITIONS; PUBLIC INFORMATION

- §1-1 Definitions
- §1-2 Public information
- §1-3 Central coordinating agency

§1-1 Definitions.

"**Action**" means a decision rendered by the director on an application pursuant to the Land Use Ordinance and to any other ordinances whose administration is vested in the department of planning and permitting; a decision rendered on a petition for declaratory ruling; and an enforcement order pursuant to the Land Use Ordinance Section 21-2.150-2.

"**Civil fine**" or "**administrative fine**" means any monetary penalty imposed by a competent judicial authority or by the director on a violator for a violation of the Land Use Ordinance.

"**Civil fines program**" means the program for imposing civil fines as a means of enforcing violations of the Land Use 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.

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

"**Decision**" or "**decision and order**" means the written findings of fact, conclusions of law, and decision and order signed by the director in any proceeding within the department's jurisdiction.

"**Department**" means the department of planning and permitting, City and County of Honolulu.

"Director" means the director of the department of planning and permitting, City and County of Honolulu, or the director's designated representative, who shall be the administrator of the department's civil fines program.

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

"Land Use Ordinance" means Ordinance No. 86-96, as amended, which is codified as Chapter 21 Revised Ordinances of Honolulu, 1990, as amended.

"Order" means a document signed by the director, identifying a violation, specifying corrective action, and assessing a fine or other penalty, as provided by §8.60-2.B of the Land Use Ordinance, or other ordinance, rule or regulation as may be applicable, and by chapter 10 of these rules.

"Recurring violation" means a repetition of the same type of violation of the Land Use Ordinance or of the same permit condition, at the same location, by the same responsible party."

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

"Violation" means:

- (1) Use of any structure or land, or the location or construction of any structure without a permit or other authorization required by the Land Use Ordinance; or
- (2) Use of any structure or land, or the location or construction of any structure in a manner not permitted by the Land Use Ordinance or by the terms or conditions of any permit or other authorization issued pursuant to the Land Use Ordinance; or
- (3) Misrepresentation of fact on any application, plan, or other information submitted to obtain any authorization or permit, including but not limited to representations made in affidavits, recorded covenants, parking agreements, and joint development agreements; or
- (4) Failure to comply, in whole or in part, with any other specific requirement or condition provided by the Land Use Ordinance.

"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. [Eff 10/24/93; am 4/1/94; am 5/17/98; am **DEC 13 1999**] (Auth: RCH §6-903) (Imp: §6-903, HRS §91-2)

§1-2 Public information. (a) The public may obtain information about matters within the jurisdiction of the department by inquiring at:

- (1) The office of the city clerk, city hall, where there are on file all rules of the department; or at
- (2) The office of the department of planning and permitting, Honolulu Municipal Building, 7th floor, 650 South King Street, Honolulu, Hawaii 96813.

(b) All departmental files are public records and may be examined upon request. Permit files include applications, director's reports, maps and drawings, written testimony, correspondence, tape recordings or written minutes of proceedings, orders, and all other pertinent documents.

(c) Inquiry may be made in person at the department's office during regular business hours, or by submitting a request for information in writing to the director.

(d) Copies of departmental rules and all public records of the department are available upon payment of the fees established by city ordinance. [Eff 10/24/93; am **DEC 13 1999**] (Auth: RCH §13-105) (Imp: HRS §91-2, RCH §13-105)

§1-3 Central coordinating agency. (a) The department has been designated by the city council as the central coordinating agency (CCA) for the City and County of Honolulu.

(b) In its role as the CCA, the department, in cooperation with other city, state, and federal agencies, shall:

- (1) Maintain and update a repository of laws, rules, procedures, permit requirements and permit review criteria of federal, state, and county agencies having control or regulatory powers over land development projects on Oahu.
- (2) Maintain and update a master file of building permit applications, subdivision applications, land use permits, and land use designations on Oahu.
- (3) Study the feasibility and advisability of measures to streamline the development approval process. [Eff 10/24/93]
(Auth: HRS §46-18, ROH §§2-14.2 - 2.14-5)
(Imp: HRS §46-18, ROH §§2-14.2 - 2.14-5)

CHAPTER 1.1

REGULATORY PROCESSES

- 1.1-1 Failure to act within established maximum period of time
1.1-2 Extension of time period

1.1-1 Failure to act within established maximum period of time. If the director fails to take action on a completed application for a permit required by law, and requiring only the director's approval, within the established maximum period of time as established within: these rules of practice and procedure, as amended; Chapter 21, Revised Ordinances of Honolulu, as amended, Subdivision Rules and Regulations, as amended; or Rules of the Department of Planning and Permitting Governing the Enforcement of Housing Code and Building Codes and Regulations, as amended, the permit shall be deemed approved. Action shall be as defined by section 1-1. [Eff **DEC 13 1999**] (Auth: ROH §21-2.60, HRS 91-13.5)

1.1-2 Extension of time period. For purposes of this chapter, an extension shall be construed as being within the required established maximum period of time, provided, however, that no extension shall be permitted, except as follows:

- (1) In the event of a national disaster, state emergency, or union strike, which would prevent the applicant or the department from fulfilling application or review requirements.
- (2) An extension required to comply with section 21-2.40-2(d), ROH; and
- (3) For permits specified as minor or major within chapter 21, ROH, as amended: one extension of up to 15 days for a minor permit or up to 30 days for a major permit, provided that an extension permitted under this paragraph shall not be combined with an extension permitted under paragraph (2).

[Eff **DEC 13 1999**] (Auth: ROH 21-2.60, HRS 91-13.5) (Imp: ROH 21-2.60, HRS 91-13.5)

CHAPTER 2

RULEMAKING

§2-1	Initiation of rulemaking procedures
§2-2	Contents of petition
§2-3	Disposition of petition
§2-4	Notice of public hearing
§2-5	Conduct of public hearing

§2-1 Initiation of rulemaking procedures.

(a) The director may at any time initiate proceedings to adopt, amend, or repeal any rule of the department.

(b) Any person may petition the director, requesting the adoption, amendment or repeal of any rule of the department. [Eff 10/24/93]

(Auth: RCH §§4-105, 6-903) (Imp. RCH §6-903, HRS §§91-2, 91-6)

§2-2 Contents of petition. Petitions for rulemaking shall contain:

- (1) The petitioner's name, address, and telephone number.
- (2) A draft of the substance of the proposed rule or amendment or a designation of the provision sought to be repealed.
- (3) A statement of the nature of the petitioner's interest.
- (4) A statement of the reasons in support of the proposed rule, amendment, or repeal.

[Eff 10/24/93] (Auth: HRS §91-6, RCH §4-105)
(Imp: HRS §91-6)

§2-3 Disposition of petition. Within thirty days after receipt of the petition, the director shall either deny the petition in writing, stating the reasons for the denial, or initiate rulemaking proceedings in accordance with HRS §91-3. Upon disposition of the petition, the director shall notify the petitioner in writing. [Eff 10/24/93]

(Auth: HRS §91-6) (Imp: HRS §91-6)

§2-4 Notice of public hearing. (a) When, pursuant to a petition or on his own initiative, the director proposes to adopt, amend, or repeal a rule, notice of proposed rulemaking shall be published at least once in a newspaper of general circulation within the city and county.

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

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

(d) The notice shall include the following information:

- (1) A statement of the substance of the proposed rule adoption, amendment, or repeal; or a general description of the subjects involved and the purposes to be achieved by the proposed rule adoption, amendment, or repeal.
- (2) A statement that a copy of the proposed rule to be adopted, amended, or repealed will be mailed at no cost to any interested person who requests a copy.
- (3) The date, time, and place where the public hearing will be held and where interested persons may testify on the proposal.

[Eff 10/24/93] (Auth: HRS §91-3) (Imp: HRS §91-3)

§2-5 Conduct of public hearing. The public hearing for adoption, amendment, or repeal of rules shall be conducted as provided by §5-4. [Eff 10/24/93] (Auth: HRS §§91-2, 91-3) (Imp: HRS §§91-2, 91-3)

CHAPTER 3

DECLARATORY RULINGS

§3-1	Who may petition
§3-2	Contents of petition
§3-3	Referral to other agencies
§3-4	Director's action on petition
§3-5	Refusal to issue declaratory ruling
§3-6	Applicability of declaratory ruling

§3-1 Who may petition. Any interested person may petition the director for a declaratory ruling as to the applicability of any statute or ordinance relating to the department, or of any rule or order of the department. [Eff 10/24/93] (Auth: HRS §91- 8)
(Imp: HRS §§ 91-2, 91-8)

§3-2 Contents of petition. (a) The petition shall contain:

- (1) The petitioner's name, address, and telephone number.
- (2) Designation of the specific provision, rule, or order in question, together with a statement of the controversy or uncertainty involved.
- (3) A complete statement of facts.
- (4) A statement of the petitioner's interest and reasons for submitting the petition.
- (5) A statement of the petitioner's position or opinion.
- (6) Justification and legal arguments supporting the petitioner's position.

(b) Any petition which does not conform to the foregoing requirements may be rejected. [Eff 10/24/93]
(Auth: HRS §91-8, RCH §4-105) (Imp: HRS §§91-2, 91-8)

§3-3 Referral to other agencies. Where any question of law is involved, the director may refer the matter to corporation counsel. The director may also obtain the assistance of other agencies when necessary or desirable. [Eff 10/24/93] (Auth: HRS §91-8)
(Imp: HRS §91-2, 91-8)

§3-4 Director's action on petition. (a) Within sixty days after the receipt of a petition for declaratory ruling, the director shall either deny the petition in writing stating the reasons for refusing to issue a declaratory ruling, or shall issue a declaratory ruling on the matters contained in the petition.

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

[Eff 10/24/93] (Auth: RCH §4-105, HRS §§91-2, 91-8)
(Imp: HRS §§91-2, 91-8)

§3-5 Refusal to issue declaratory ruling. The director may refuse to issue a declaratory ruling where:

- (1) The question is speculative or hypothetical and does not involve existing facts, or facts which can reasonably be expected to arise within the next year.
- (2) The petitioner's interest is not of the type which would give him/her standing to maintain an action if he/she were to seek judicial relief.
- (3) The issuance of the declaratory ruling may adversely affect the interests of the city in any litigation which is pending or may reasonably be expected to arise.
- (4) The matter is not within the jurisdiction of the department.
- (5) For other good cause. [Eff 10/24/93;
am **DEC 13 1999**] (Auth: RCH §4-105) (Imp: HRS §§91-2, 91-8)

§3-6 Applicability of declaratory ruling. A declaratory ruling shall apply only to the factual situation stated in the petition or set forth in the ruling. A declaratory ruling shall not apply to situations where the facts are different or where there are additional facts. [Eff 10/24/93] (Auth: RCH 4-105)
(Imp: HRS §§91-2, 91-8)

CHAPTER 4

RECONSIDERATION OF A PREVIOUS ACTION

§4-1	Purpose
§4-2	Basis for reconsideration
§4-3	Initiation of reconsideration
§4-4	Petition requirements
§4-5	Procedure

§4-1 Purpose. Reconsideration provides a mechanism for considering factual evidence which was not part of the director's original decision to approve or deny an application, prior to the expiration of the appeal period. Reconsideration also gives the director the authority to review and revoke a previous decision at any time, based on new information or changed circumstances. [Eff 10/24/93] (Auth: RCH §§4-105, 6-903) (Imp: HRS §91-2)

§4-2 Basis for reconsideration. The director may reconsider a previous decision based on the following circumstances:

- (1) New evidence that was not part of the record upon which the original action was based.
- (2) Change in the conditions, facts, or circumstances upon which the original action was based.
- (3) Failure to comply with conditions attached to the action or with the scope of the approval. [Eff 10/24/93] (Auth: RCH §§4-105, 6-903) (Imp: RCH §§4-105, 6-903, HRS §91-2)

§4-3 Initiation of reconsideration. (a) The director may, on his own initiative, reconsider any previous action under the circumstances described in §4-2.

(b) The applicant or any person who is directly affected by the decision or who participated in the original proceeding may request reconsideration of an

action of the director by filing a written petition for reconsideration within 30 days of the date of mailing of the decision. [Eff 10/24/93] (Auth: RCH §§4-105, 6-903) (Imp: RCH § 6-903, HRS §91-2)

§4-4 Petition requirements. (a) The petition for reconsideration shall contain:

- (1) The petitioner's name, address and telephone number.
- (2) Identification of the permit or action which the petitioner requests the director to reconsider.
- (3) A statement of the petitioner's interest in the matter and the reasons for requesting reconsideration.
- (4) A statement of the change requested and the new evidence which is the basis for requesting reconsideration of the original decision.

(b) The director shall acknowledge receipt of the petition in writing, and inform the petitioner whether or not the petition complies with the filing requirements of subsection (a) and §4-3(b).

(c) The director may reject a petition for reconsideration which was not timely filed or which does not comply with the requirements of §4-4(a).

[Eff 10/24/93] (Auth: RCH §§4-105, 6-903) (Imp: RCH §6-903, HRS §91-2)

§4-5 Procedure. (a) The director shall notify the current landowner(s), the applicant of record, and persons who participated in the previous action, of his intent to reconsider a previous action; and shall provide them with a copy of the petition, if one has been submitted.

(b) The notice shall inform the owner, applicant and other interested persons that they have 15 days from the date of the notice to submit a written response.

(c) Within 45 days of the date of notification the director shall act to affirm, modify, or revoke the previous decision, or shall give notice of a public hearing on the matter, if one is required.

(d) Whenever a public hearing was required for the original action, the director shall advertise and hold a public hearing, as provided by chapter 5 of these rules.

(e) If a public hearing is not required, a public hearing may nevertheless be held, if, in the director's judgement, there is sufficient cause to do so.

(f) Within 30 days after the close of the public hearing, the director shall act to affirm, modify, or revoke the previous decision. A copy of the director's report and decision shall be mailed to the applicant and to all those who participated in the reconsideration proceeding. [Eff 10/24/93]

(Auth: RCH §§4-105, 6-903) (Imp: RCH §6-903, HRS §91-2)

CHAPTER 5

PUBLIC HEARINGS

§5-1	Notice of public hearing
§5-2	Time and place
§5-3	Hearing officer
§5-4	Conduct of public hearing

§5-1 Notice of public hearing. (a) Unless otherwise provided by law, notice of a public hearing held by the department shall be published at least ten (10) days prior to the hearing in a newspaper of general circulation in the city. The notice shall also be available at the department's office.

(b) The director shall notify pertinent neighborhood boards of the public hearing.

(c) A notice of the public hearing and request to be present at the public hearing shall be mailed to the applicant and to the applicant's agent.

[Eff 10/24/93] (Auth: RCH §§6-903, 13-106) (Imp: HRS §92-7, RCH §13-106)

§5-2 Time and place. The time and place for a public hearing shall be fixed by the director in accordance with existing statutory requirements, provided that in the absence of other specific requirements, he shall give due regard to the convenience of the interested public. [Eff 10/24/93] (Auth: RCH §6-903) (Imp: HRS §92-7, RCH §13-106)

§5-3 Hearing officer. The director or a designated representative shall act as hearing officer and conduct the public hearing. [Eff 10/24/93] (Auth: RCH §6-903) (Imp: RCH §6-903)

§5-4 Conduct of public hearing.

(a) The public hearing shall afford interested persons an opportunity to present oral or written testimony for or against the application request, subject, however, to reasonable restrictions imposed by the hearing officer.

(b) Any person may also present written testimony to the director or hearing officer before the hearing is closed. Such testimony shall be made a part of the hearing record.

(c) At the start of the hearing, the hearing officer shall read the notice of hearing and shall outline briefly the procedure to be followed. The hearing officer may call on a member of the department's staff to explain the application and present other pertinent information.

(d) The hearing officer may continue or postpone a scheduled hearing for good cause. If the rescheduled date is announced at the original hearing, publication of the notice of continued hearing is not required. If the continuance is indefinite, a new hearing notice shall be published and notice shall be mailed to the applicant and all participants.

(e) A record of the public hearing shall be kept and made a part of the file. The record shall consist of either written summary minutes or a transcript, or of a tape recording of the proceedings, as well as the written testimony. The hearing record shall be available to the public at the department of planning and permitting. [Eff 10/24/93; am]
Auth: HRS §91-2, §91-3) (Imp: HRS §91-3)

DEC 13 1999

CHAPTER 6

DECISION

- §6-1 Basis for decision
- §6-2 Notice of decision

§6-1 Basis for decision. The director shall consider the application submittal, the hearing record if a hearing was held, the standards for decision-making provided by law, and all other pertinent information in making a decision. [Eff 10/24/93]
(Auth: RCH §6-903) (Imp: RCH §6-903)

§6.2 Notice of decision. The director shall mail the written decision to the applicant and, upon request, shall give notice of the decision to other interested persons. The decision shall be available for review by the public at the department of planning and permitting. [Eff 10/24/93; am **DEC 13 1999**]
(Auth: RCH §6-903, HRS §91-2) (Imp: HRS §91-2)

CHAPTER 7

INTERPRETATION OF THE LAND USE ORDINANCE BY THE
DIRECTOR

- §7-1 Purpose
§7-2 Procedure

§7-1 Purpose. In administering the provisions of the Land Use Ordinance it is necessary, from time to time, to review specific provisions for intent, clarity and applicability to a particular situation. This chapter sets forth procedures by which the director may render a written interpretation to clarify or elaborate upon the meaning of a section or sections of the Land Use Ordinance. [Eff 10/24/93] (Auth: RCH §6-903, ROH §21-1.30) (Imp: ROH §21-1.30, HRS §91-2)

§7-2 Procedure. (a) Upon review of a particular section of the Land Use Ordinance within the context of the intent provisions and of other applicable sections of the Land Use Ordinance, the director may render a written interpretation to clarify or elaborate upon the meaning of the section.

(b) Where any question of law is involved, the director may refer the matter to the corporation counsel.

(c) A written interpretation shall be signed by the director and shall include:

- (1) Identification of the section(s) in question.
- (2) A statement of the problem.
- (3) A statement of interpretation, including the reasons supporting it.

(d) A written interpretation issued by the director shall be the basis for administering and enforcing the pertinent section(s) of the Land Use Ordinance.

(e) All written interpretations rendered pursuant to this chapter are public records.

[Eff 10/24/93] (Auth: RCH §6-903, ROH §21-1.30)

(Imp: HRS §91-2)

CHAPTER 8

RESTRICTIVE COVENANTS

- §8-1 Applicability
- §8-2 Filing procedure

§8-1 Applicability. (a) The director may require a fee owner to record a covenant on the title to a property in the following situations:

- (1) To record special conditions attached to a permit, variance, or zone change.
- (2) To clarify the intended use of a property or structure.
- (3) To declare the use of a single dwelling unit only for single-family residential purposes when the dwelling unit meets one or more of the following criteria:
 - (A) Exceeds 3,000 square feet of floor area.
 - (B) Has more than two exterior entrances.
 - (C) Has exterior entrances on more than one floor.
 - (D) Has a room or rooms with two kitchen fixtures, appliances, or devices for heating or cooking food, washing utensils used for dining and food preparation, and for refrigeration of food, in addition to a full kitchen.

(b) The covenant shall grant the City and County of Honolulu explicit authority to enforce the provisions of the document. [Eff 10/24/93]
(Auth: RCH §6-903, ROH §21-1.30) (Imp: ROH §21-1.30, HRS §91-2)

§8-2 Filing procedure. A restrictive covenant required under §8-1 shall be filed with the bureau of conveyances and/or with the land court in the case of land court property, and proof of recordation shall be provided to the department of planning and permitting. [Eff 10/24/93; amended **DEC 13 1999**] (Auth: RCH §6-903, ROH §21-1.30) (Imp: HRS §91-2)

CHAPTER 9

ZONING VARIANCES

§9-1	Purpose
§9-2	Application
§9-3	Filing fee
§9-4	Preliminary review
§9-5	Public hearing
§9-6	Decision
§9-7	Variance term
§9-8	Reapplication

§9-1 Purpose. The Charter of the City and County of Honolulu provides that any provision of the Land Use Ordinance may be set aside when strict application of the law would create unnecessary hardship. The purpose of this chapter is to set forth the requirements and procedures for zoning variance applications.
[Eff 10/24/93] (Auth: RCH §6-910) (Imp: HRS §91-2, RCH §6-910)

§9-2 Application. (a) A person seeking a variance of provisions of the Land Use Ordinance affecting a parcel of land may discuss the matter informally with the director or the staff of the department of planning and permitting before filing an application.

(b) The processing of a zoning variance shall be commenced when a person completes the appropriate application form available at the department of planning and permitting.

(c) The application shall include written authorization from the fee owner or owners of the land.

(d) The completed application shall be filed at the department of planning and permitting with all exhibits and other data required, together with the appropriate filing fee. [Eff 10/24/93; am]
(Auth: SRCH 6-903) (Imp: HRS §91-2) **DEC 13 1999**

§9-3 Filing fee (a) The filing fee set by ordinance shall be submitted with the variance application. The fee may not be refunded except as provided in §9-4.

(b) Government agencies are exempt from payment of the filing fee. [Eff 10/24/93] (Auth: §6-903)
(Imp: HRS §91-2)

§9-4 Preliminary review. (a) The director shall review the application to determine that a variance is required and that the application is complete.

(b) If the application is incomplete or if a variance is not required, the director shall return the application and the filing fee to the applicant with an explanation of the deficiencies or the reason a variance is not required.

(c) An application which has been rejected for incompleteness may be completed and refiled by the applicant, except that as provided in §9-8, the director shall not accept an application if it has been returned as incomplete a second time within 365 days from the date the application was first filed.
[Eff 10/24/93] (Auth: RCH §6-903) (Imp: HRS §91-2)

§9-5 Public hearing. Notice and conduct of the public hearing shall be as provided in chapter 5 of these rules, relating to public hearings.
[Eff 10/24/93] (Auth: RCH §§13-106, 6-910) (Imp: 6-910)

§9-6 Decision. In addition to the provisions of chapter 6 of these rules, relating to decisions, the following requirements shall apply to decisions on variance applications:

- (1) If all of the conditions of unnecessary hardship set forth in §6-910 of the Charter are met, the director shall grant the variance. The director may attach appropriate conditions to the variance.
- (2) If any of the conditions of unnecessary hardship are not met, the director shall deny the variance.
- (3) The director shall issue his decision and order in writing within 60 days of the public hearing on the matter.

[Eff 10/24/93] (Auth: RCH §6-903, 6-910 RCH)
(Imp: §6-903, HRS §91-2)

§9-7 Variance term. (a) A variance, when approved, runs with the land unless limited by the decision and order.

(b) When the decision and order granting a variance establishes time limits within which conditions must be met, the director may for good cause and without a hearing, extend the time limits. Requests for time extensions must be filed with the director before the time limits expire.

(c) If the applicant permits the time limits to expire without meeting all other conditions of the decision and order, the variance shall become null and void. A new application for the same variance shall not be filed within 365 days from the lapse date.

[Eff 10/24/93] (Auth: RCH §6-903) (Imp: HRS §91-2)

§9-8 Reapplication. (a) A request to amend a variance that has been approved may be filed as a new application at any time.

(b) If a variance has been denied, a request for the same or substantially the same variance shall not be filed within 365 days from the effective date of denial. If the variance is denied a second time, a further request for the same or substantially the same variance shall not be filed within three years from the effective date of the second denial.

(c) If a variance is withdrawn, the same variance request shall not be filed within 365 days from the date of withdrawal.

(d) If a variance application is rejected for incompleteness twice within a twelve month period, the same application shall not be filed within 365 days from the date of the second rejection.

[Eff 10/24/93] (Auth: RCH §6-903) (Imp: RCH §6-903, HRS §91-2)

CHAPTER 10

ENFORCEMENT: ADMINISTRATIVE FINES FOR LAND USE
ORDINANCE VIOLATIONS

- §10-1 Purpose
- §10-1.01 Issuance of order
- §10-2 Time period for compliance
- §10-3 Administrative fines
- §10-3.01 Addition of unpaid civil fines to taxes,
fees and charges collected by the city
- §10-4 Other legal remedies

§10-1 Purpose. The express purpose of the civil fines program is to encourage compliance with the provisions of the Land Use 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 4/1/94] (Auth: ROH §21-8.60-2) (Imp: ROH §21-8.60-2, HRS §91-2)

§10-1.01 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.

(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 responsible for the violation or with an interest in the property where a violation occurred. Service shall be in person or by certified mail, restricted delivery, 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 all potential remedies associated with each violation, including the addition of any unpaid civil fine to certain taxes, fees and charges collected by the city. 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.

(d) The order shall advise the violator(s) that the order shall become final thirty days after the date of its mailing or service in person.

(e) Any person(s) subject to an order pursuant to this chapter may appeal the director's decision to the zoning board of appeals. The appeal shall include the violation and the remedy stipulated by the order, including civil fines and the addition of unpaid civil fines to taxes, fees and charges collected by the city. The appeal must be received within thirty days from the date of mailing or personal service of the order. The appeal must be made in accordance with the Rules Relating to Administrative Procedure, Zoning Board of Appeals. The order becomes final after this thirty day period. [Eff 10/24/93; am and ren §10-1 4/1/94; am **DEC 13 1999**] (Auth: ROH §21-8.60-2; Ord. 93-109)
(Imp: ROH §21-8.60-2, HRS §91-2)

§10-2 Time period for compliance. (a) When specifying the corrective action to be taken and a reasonable deadline to correct the violation, the director shall use the following schedule as a guide:

Schedule for Correction of Violations

Type of Violation	First Violation	Recurring Violation
Use	15 days	7 days or less
Development Standard	30 days	15 days or less
Sign	7 days	5 days or less
Permit Condition	30 day	15 days or less

(b) This schedule is only a guide and may be modified in consideration of the following:

- (1) The type and the 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.

- (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 10/24/93; am 5/17/98] (Auth: RCH § 6-903, ROH §21-8.60-2) (Imp: ROH §21-8.60-2, HRS §91-2)

§10-3 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 following schedule and subsections (b) through (i).

Schedule of Civil Fines

Type of Violation	Fine
Use	\$ 50 - 1,000
Development Standards	200 - 1,000
Permit Conditions	200 - 1,000
Signs	50 - 1,000
Misrepresentations	100 - 1,000

(b) In general, the fine for an initial violation shall be the lowest for that type of violation. However, 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 there is income derived from the violation.
- (4) Whether there are multiple violations.
- (5) Whether it is a recurring violation as defined in §1.1.

(c) If the violation is recurring, then the fine shall be increased for each recurrence, up to the maximum of \$1,000, according to the following schedule:

Fine Schedule for Recurring Violations

Recurring Violation	Use/Sign	Devel. Standards/ Permit Conditions	Misrepresentations
First	\$ 100	\$ 500	\$ 250
Second	250	750	500
Third	500	1,000	750
Fourth	750	1,000	1,000
Fifth	1,000	1,000	1,000
Sixth	1,000	1,000	1,000

(d) The fine assessed by the order is payable whether 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.

(e) When a violation is not corrected by the deadline established in the order, the director may assess an additional fine of \$50 to \$1,000 for each separate day during which the violation remains uncorrected. Daily fines may be increased quarterly up to a maximum of \$1,000 per day, until the violation is corrected, in accordance with the following schedule:

Fine Schedule for Daily Fines

	Initial Daily Fine	3rd Month*	6th Month*	9th Month*	12th Month*	15th Month*
Initial Violation	\$ 50	\$ 100	\$ 250	\$ 500	\$ 750	\$1,000
Recurrence:						
First	50	100	250	500	750	1,000
Second	100	250	500	750	1,000	1,000
Third	250	500	750	1,000	1,000	1,000
Fourth	500	750	1,000	1,000	1,000	1,000
Fifth	750	1,000	1,000	1,000	1,000	1,000

* From the date of the order

(f) 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.

(g) 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.

(h) After completion of a review pursuant to subsections (f) and (g), 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, and upon completion of all appeal proceedings, 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.

(i) 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 10/24/93; am 5/17/98] (Auth: RCH §6-903, ROH §21-8.60-2, HRS §46-1.5) (Imp: ROH §21-8.60-2, HRS §91-2, HRS §46-1.5)

§10-3.01 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:
Department of Planning and Permitting	Building and demolition Permit fees
	Sign permit fee
	Building code variance application fee
	Relocation permit fee
	All Land Use Ordinance permit and other application fees, including application fees for a zone map change
	Special management area use permit fee
	Shoreline variance application fee
	Subdivision approval fee
	Land Use Ordinance variance application fee
	Park dedication fee
	Special use permit (involving 15 acres or less and not in the conservation district) fee
	General plan amendment fee
	Development plan amendment fee
	State land use district boundary amendment (involving 15 acres or less and not in the conservation district) fee
	Grading, excavation, grubbing and trenching permit fees

Collecting Agency:	Eligible Tax, Fee or Charge:
Customer Service Department	Motor vehicle registration fee and vehicle weight tax
	Motor vehicle transfer of ownership fee
	Drivers license renewal fee
	Business license fee
Department of Budget and Fiscal Services	Real property tax
Liquor Commission	Liquor license and renewal fees
Department of Environmental Services	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. The director shall provide a copy of the SOP to all collecting agencies listed in subsection (f) of this section. The SOP shall provide at least the following:

- (1) An inventory of eligible taxes, fees and charges to which the director may choose to add unpaid civil fines. The inventory shall include information about each eligible tax, fee and charge collected by the city necessary for the director to administer the civil fines program.
- (2) The procedures for notifying the collecting agencies in writing that an unpaid civil fine has been added to a tax, fee or charge.
- (3) The procedures for notifying the collecting agencies in writing that a resolution has been reached regarding the payment of unpaid civil fines.
- (4) The procedures, if used under an agreement with a particular collecting agency, for the director to electronically flag a tax, fee or charge to which an unpaid civil fine has been added.

(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, restricted delivery, 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 fine is 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 resolution 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 of 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 4/4/94, am 5/17/98; am **DEC 13 1999**]
(Auth: ROH §1-19.4) (Imp: ROH §1-19.4, HRS 46-1.5)

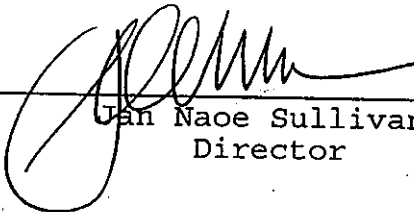
§10-4 Other legal remedies. (a) The director may refer violations to the prosecutor's office for criminal prosecution or pursue any other legal means to correct the violations.

(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 10/24/93; am 4/1/94]
(Auth: ROH §21-8.60-1) (Imp: ROH §21-8.60-1)


These Rules of Practice and Procedure of the Department of Planning and Permitting were amended following a public hearing held on September 13, 1999, notice of which was published in MidWeek Magazine on August 9, 1999.

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.

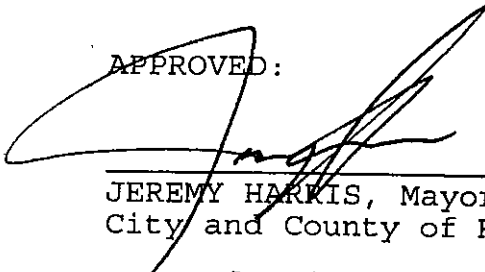
DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU


Jan Naoe Sullivan
Director

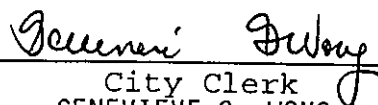
APPROVED AS TO FORM:


Deputy Corporation Counsel
Date 11-4-99

APPROVED:


JEREMY HARRIS, Mayor
City and County of Honolulu
Date December 3, 1999

RECEIVED this 3rd day of
December, 1999.


City Clerk
GENEVIEVE G. WONG