

CITY AND COUNTY OF HONOLULU

Repeal of the Amended Policy, Rules and Regulations
Governing Recreational Stops by Commercial Tour
Companies in City Parks
and the Adoption of Chapter Title 19, Chapter 17, City
and County of Honolulu Administrative Rules

August 31, 2020

SUMMARY

1. "Amended Rules and Regulations Governing Recreational Stops by Commercial Tour Companies in City Parks", is repealed.
2. Title 19, Chapter 17, City and County of Honolulu Administrative Rules, entitled "Rules and Regulations Governing Recreational Stops", is adopted.

CITY AND COUNTY OF HONOLULU
ADMINISTRATIVE RULES

DEPARTMENT OF PARKS AND RECREATION

AMENDED RULES AND REGULATIONS GOVERNING
RECREATIONAL STOPS BY COMMERCIAL TOUR COMPANIES
IN CITY PARKS

PART X

REPEALED

§§56 to 59 Repealed. [R SEP 25 2020]

CITY AND COUNTY OF HONOLULU ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF PARKS AND RECREATION

CHAPTER 17

RULES AND REGULATIONS GOVERNING
RECREATIONAL STOPS

Subchapter 1 General Provisions

- §19-17-1 Purpose
- §19-17-2 Application
- §19-17-3 Definitions
- §19-17-4 Penalties
- §19-17-5 Severability

Subchapter 2 Special Provisions

- §19-17-6 Permit required
- §19-17-7 Permit application
- §19-17-8 Permit fees
- §19-17-9 Permit conditions
- §19-17-10 Regulations governing recreational stops
- §19-17-11 Closing of areas
- §19-17-12 Denial or revocation of permit

SUBCHAPTER 1

GENERAL PROVISIONS

§19-17-1 Purpose. The purpose of these rules is to regulate the use of beach parks for recreational stops by commercial tour companies:

- (1) To ensure that beach parks are readily accessible to residents and the public at large;
- (2) To ensure maximum permissible use of beach park areas and facilities by appropriate distribution of users;
- (3) To ensure proper, orderly and equitable use of beach park areas and facilities through user controls;
- (4) To ensure protection and preservation of areas and facilities by not overtaxing beach park facilities; and
- (5) To promote the health, safety and welfare of the users of beach park areas and facilities. [Eff **SEP 25 2020**] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, §10-1.3)

§19-17-2 Application. (a) This chapter shall govern recreational stops in beach parks, except for Hanauma Bay Nature Preserve, under the control, maintenance and management of the department of parks and recreation, city and county of Honolulu.

(b) This chapter does not regulate motor carriers that provide only transportation of passengers and do not provide recreational stops, activities associated with recreational stops or prepackaged tours. [Eff **SEP 25 2020**] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, §10-1.3)

§19-17-3 Definitions. As used in this chapter, the following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Applicant" means any person eighteen years of age or older submitting a permit application or any person eighteen years of age or older acting as an authorized agent for the applicant listed on the application.

"Authorized representative" means any person authorized by the director of the department of parks and recreation to act for the department.

"Commercial tour company" shall have the same meaning as "motor carrier" as the latter term is defined herein.

"Common carrier by motor vehicles" shall have the same meaning as "common carrier by motor vehicle" as the latter term is defined in HRS chapter 271-4(11) to mean any person which holds itself out to the general public to engage in transportation by motor vehicle of passengers or property or any class or classes thereof for compensation.

"Contract carrier by motor vehicle" shall have the same meaning as "contract carrier by motor vehicle" as the latter term is defined in HRS chapter 271-4 to mean any person which engages in transportation by motor vehicle of passengers or property for compensation (other than transportation referred to in HRS chapter 271-4(11)) under continuing contracts with one person or a limited number of persons either (A) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served, or (B) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

"Department" means the department of parks and recreation, city and county of Honolulu.

"Director" means the director of the department of parks and recreation, or duly authorized representative.

"HRS" means the Hawaii Revised Statutes.

"Licensed motor carrier" shall mean a motor carrier with a current certificate of public convenience and necessity or permit issued by the public utilities commission authorizing the transportation of persons.

"Motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

"Motor vehicle" shall have the same meaning as "motor vehicle" as the latter term is defined in HRS Chapter 271.

"Park district" means a geographic area as defined in Exhibit A attached hereto.

"Parks permit" or "permit" means a non-transferrable department document granting a permittee permission to use recreational and other areas and under the control, maintenance, management and operation of the department.

"Parks permit office" means the office in the department responsible for processing of application and the issuance park permits.

"Permit application" means a department form to request a permit.

"Person" or "persons" means any individual, firm, partnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

"Public utilities commission" or "PUC" means a State quasi-judicial commission that regulates all chartered, franchised, certificated, and registered public utilities companies operating in the State of Hawaii.

"ROH" means the revised ordinance of Honolulu 1990, as amended.

"Recreational stop" means the use of a beach park by a commercial tour company for activities that may include, but are not limited to, sightseeing, spectating, picture taking, beach combing, swimming, guided tours and eating of prepared foods.

"State" means the State of Hawaii.

"Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of persons transported and the receipt, carriage, and delivery of these persons and their baggage. [Eff **SEP 25 2020**]
(Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, §10-1.3)

§19-17-4 Penalties. Any person violating any provision of this chapter, or any term or condition of any permit issued hereunder, may upon conviction, be punished by a fine not exceeding \$500 or by imprisonment of not more than thirty days, or by both such fine and imprisonment. [Eff SEP 25 2020] (Auth: RCH §6-1403; ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3, 10-1.6)

§19-17-5 Severability. If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof. [Eff SEP 25 2020] (Auth: RCH §6-1403; ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

SUBCHAPTER 2

SPECIFIC PROVISIONS

§19-17-6 Permit required. (a) A recreational stop is permitted only in a beach park designated by the director for recreational stops.

(b) No commercial tour company may use a beach park for a recreational stop without first obtaining a park permit from the department.

(c) A permit is not required if the recreational stop does not exceed fifteen (15) minutes in duration. [Eff SEP 25 2020] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

§19-17-7 Permit application. (a) A permit to conduct a recreational stop in a beach park is available only to a licensed motor carrier.

(b) A permit that would include a recreational stop at Waimanalo bay beach park is available only to licensed motor carriers that utilize motor vehicles with passenger seating capacity of no more than fifteen passengers.

(c) A licensed motor carrier desiring a permit to conduct a recreational stop shall submit a permit application to the park permits office.

(d) The permit application shall set forth the name, address and contact phone number of the applicant, name of authorized agent and agent contact information, and list the beach parks applicant intends to use for a recreational stop.

(e) Applications must be accompanied by the following current and complete documentation:

- (1) Current licenses and certificates required to conduct business in the State which include but are not limited to business registration. The department may waive this requirement for any applicant that had submitted the required documentation with a prior application and the documentation remain valid at the time of the new application;
- (2) Proof of a current comprehensive general liability insurance policy in which the combined limit of liability for bodily injury and property damage is \$1 million per occurrence. The insurance certificate shall name the city and county of Honolulu, its officers and employees, and the State of Hawaii, its officers and employees, as additional insured. The insurance must also cover any vehicle listed on the permit application. A copy of the certificate of insurance shall be filed with the permit application;
- (3) Proof of automobile and umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any

auto (including owned, hired, and non-owned auto) used by the applicant;

(4) Copy of valid certificate of public convenience and necessity or permit issued by the PUC authorizing the transportation of persons; and

(5) Description of the make, body type, year of manufacture, registered owner, state license number, identifying number assigned to the applicant by the PUC, and the maximum passenger capacity of the motor vehicle that will be used by the applicant to provide recreational stops.

(f) The permitted licensed motor carrier shall only park in a marked stall with its motor vehicle engine off while in the parking stall.

(g) The department may require an applicant to provide additional information as determined necessary by the department to assist with review and processing of the application.

(h) The department may reject any application that contains false, fictitious or fraudulent information or that is incomplete.

(i) Applications must be submitted and received by the park permits office between the 1st and 5th day of the month prior to the month requested. For example, an applicant requesting a recreational stop permit for the month of March must ensure that the parks permit office receives the permit application between February 1 through February 5. Applications received before the 1st of the month or after the 5th of the month will be rejected and returned to the applicant.

(j) The maximum number of permits for recreational stops that the department may issue shall not exceed five permits per month per park district.

(k) Permits for recreational stops shall be issued on a first-come first-served basis, however, if the number of applications exceed the maximum of five permits per month, the department will conduct a lottery to award the five commercial stop permits for

the month. The permits will be awarded by random draw from properly submitted permit applications.

(1) No applicant may submit more than one application per park district. If an applicant submits more than one application per park district, all applications submitted by the applicant shall be rejected. For the purpose of these rules, applicants considered to be submitting more than one application shall include but not be limited to:

- (1) An individual submitting more than one application, whether in its own name or through an agent;
- (2) An individual or legal entity submitting an application who also owns, directly or indirectly, any interest in a joint venture, partnership or corporation, which has also submitted an application;
- (3) A joint venture partnership or corporation submitting an application where a person owning, directly or indirectly, any interest in such joint venture partnership, or corporation has also submitted an application; or
- (4) A joint venture, partnership or corporation submitting an application where a person owning, directly or indirectly, any interest in such joint venture, partnership or corporation also owns any interest in another joint venture, partnership or corporation, which has submitted an application under these rules.

(m) If there is any reasonable ground to believe that collusion exists among two or more applicants, all of the applications of the parties to such collusion shall be rejected and the parties to such collusion shall be prohibited from applying and securing future permits for one calendar year.

[Eff **SEP 25 2020**] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

§19-17-8 Permit fees. (a) An applicant shall pay the fees established by ordinance for a permit for a recreational stop prior to receipt of the permit. Fees to be assessed shall be the fees established in the fee ordinance effective at the time of application.

(b) Acceptable forms of payment include cash, check, money order or cashiers' check payable to the city and county of Honolulu.

(c) All fees are non-refundable except that the director may, in the director's discretion and if consistent with the purposes of these rules and in the public interest, waive the no-refund rule.

[Eff **SEP 25 2020**] (Auth: RCH §6-1403, ROH §1-9.1)
(Imp: ROH §§10-1.2, 10-1.3)

§19-17-9 Permit conditions. (a) The permittee is prohibited from knowingly giving false, fictitious or fraudulent information. To do so will be considered a breach of conditions and be grounds for permit revocation.

(b) The term of a recreational stop permit shall be one calendar month.

(c) A permit does not authorize recreational stops at beach parks located in state conservation districts or at any public park or beach park not listed on the permit.

(d) A permit shall be displayed in plain view on the dashboard of the motor vehicle while it is on park property and shall be presented, upon request, to any department representative or law enforcement officer. Permittee may be cited for conducting commercial stops without a permit if permittee does not display the required permit in the motor vehicle.

(e) A permittee shall not transfer, assign, or sell any or all rights granted by the permit to a third party or relinquish possession or use of the whole or any parts of the park granted to permittee under the permit.

(f) Permittee shall comply with all applicable laws, rules, and regulations of the federal, state and county governments.

(g) Permittee agrees to carry general liability insurance against claims occasioned by the action or omission of the permittee, its agents and employees in carrying out activities and operations under the recreational stop permit.

(h) Issuance of a permit is not a grant of any other approvals that may be required of the permittee for the permitted activity, nor does a permit exempt the permittee or the permitted activity from any applicable laws, rules, ordinances, and regulations of any federal, state or county government.

(i) The permit may contain such conditions as are reasonably consistent with the protection and use of the beach park for the purpose for which the park is managed. It may also contain reasonable limitations on the equipment and vehicles to be used and the time and area subject to the permit.

(j) The director may, in the director's discretion and if consistent with the purposes of this chapter and in the public's interest, change or alter the terms of the permit after it is issued.

[Eff **SEP 25 2020**] (Auth: RCH §6-1403, ROH §1-9.1)
(Imp: ROH §§10-1.2, 10-1.3)

§19-17-10 Regulations governing recreational stops. (a) A recreational stop is permitted only in beach parks designated by the director for recreational stops.

(b) A recreational stop is prohibited at any beach park located in a state conservation district or at any public park or beach park not listed on the permit.

(c) A recreational stop is prohibited at Kailua beach park, Kalama beach park, Waimanalo beach park, Kaiona beach park, Kaupo beach park, Makapuu beach park, and Kalaniana'ole beach park.

(d) A recreation stop shall not exceed ninety (90) minutes.

(e) A recreational stop is permitted only on week days, Monday through Friday, during the hours from 6:30 a.m. to 6:30 p.m., excluding state and federal holidays.

(f) No more than three motor vehicles with permits for recreational stops may be parked in a beach park at the same time.

(g) Motor vehicles shall park only in marked stalls.

(h) There shall be no cooking or preparation of food at the beach park during a recreational stop.

(i) Buffet or serving lines shall not be permitted.

(j) The use of any catering service in conjunction with a recreational stop at a beach park is prohibited.

(k) Prepared lunch, food and beverages that do not require buffet or serving lines may be distributed by the permittee to its participants during a recreational stop.

(l) The distribution of food or beverages to other park users is prohibited.

(m) Reserving of picnic sites and tables is prohibited.

(n) Litter generated by the permittee or its activity shall be picked up and placed in trash receptacles.

(o) Advertising, soliciting or selling on park property is prohibited. [Eff SEP 25 2020] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

§19-17-11 Closing of areas. The director or an authorized representative may close a beach park and restrict public use of all or any portion thereof, for the protection, restoration, and preservation of areas and facilities, or the health, safety, and welfare of person or property. [Eff SEP 25 2020] (Auth: RCH §6-1403; ROH §§ 1-9.1, 10-1.3) (Imp. ROH §§10-1.2, 10-1.3)

§19-17-12 Denial or revocation of a permit. (a)

An application for a permit for a recreational stop may be denied or a permit revoked by the director or the authorized representative when:

- (1) If applicant knowingly gives false, fictitious or fraudulent statements of representations made on the permit application.
- (2) The beach park is closed or will be closed because of damage, or because of scheduled or ongoing construction, repair or maintenance activities.
- (3) The requested beach park has been reserved for city or department sponsored activity.
- (4) Issuance of a permit will result in a violation of City, State or Federal laws, rules or ordinances.
- (5) A state of emergency is declared by the director or other proper authorities.
- (6) Natural or civil disturbances including, but not limited to tsunamis, floods, earthquakes, storms, riots, demonstrations and employee strikes, which may be occurring or threatening to occur.
- (7) The beach park is inadequate to meet the needs of the anticipated activity.
- (8) A prior application for a permit for the same time and place has been made that has been or will be granted.
- (9) It reasonably appears that based upon the information provided that the anticipated activity presents a clear and present danger.
- (10) Applicant fails to pay required fees or if payment made by check is returned unpaid.
- (11) Violations of the terms and conditions of the permit.

(b) If a permit is denied or revoked, the applicant shall be informed in writing of the reasons for denial or revocation, except under emergency circumstances, when an immediate verbal revocation or

suspension of the permit may be made, to be followed by written confirmation within seventy-two hours.

(c) If a permit is revoked, the permittee shall be ineligible to apply for a recreational stop permit for a minimum of one calendar year following revocation and be subject to other penalties as set forth in this chapter. [Eff **SEP 25 2020**] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

DEPARTMENT OF PARKS AND RECREATION

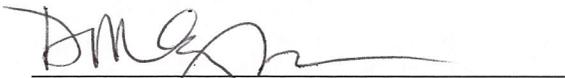
The repeal of the Rules and Regulations Governing Amended Rules and Regulations Governing Recreational Stops by Commercial Tour Companies in City Parks and the adoption of Title 19, Chapter 17, City and County of Honolulu Administrative Rules, Department of Parks and Recreation, Rules and Regulations Governing Recreational Stops, which were adopted on August 31, 2020, following a public hearing held on November 20, 2019 and June 9, 2020, after public notice was given on October 20, 2019 and May 10, 2020, in the Honolulu Star-Advertiser.

This chapter shall take effect ten (10) days after filing with the Office of the City Clerk.

DEPARTMENT OF PARKS AND RECREATION
CITY AND COUNTY OF HONOLULU


Michele K. Nekota, Director

APPROVED AS TO
FORM AND LEGALITY:


Deputy Corporation Counsel

APPROVED this 8th day of
September, 2020.


KIRK CALDWELL, Mayor
City and County of Honolulu

CERTIFICATION

I, MICHELE K. NEKOTA, in my capacity as Director of the Department of Parks and Recreation, City and County of Honolulu, do hereby certify that the foregoing is a full, true and correct copy of Title 19, Chapter 17, City and County of Honolulu Administrative Rules, entitled "Rules and Regulations Governing Recreational Stops", which were adopted on August 31, 2020 following a Public Hearing held on November 20, 2019 and June 9, 2020, after public notice was given on October 20, 2019 and May 10, 2020, in the Honolulu Star-Advertiser.



MICHELE K. NEKOTA
Director

Received this 15th day of
September, 2020.



City Clerk
GLEN I. TAKAHASHI

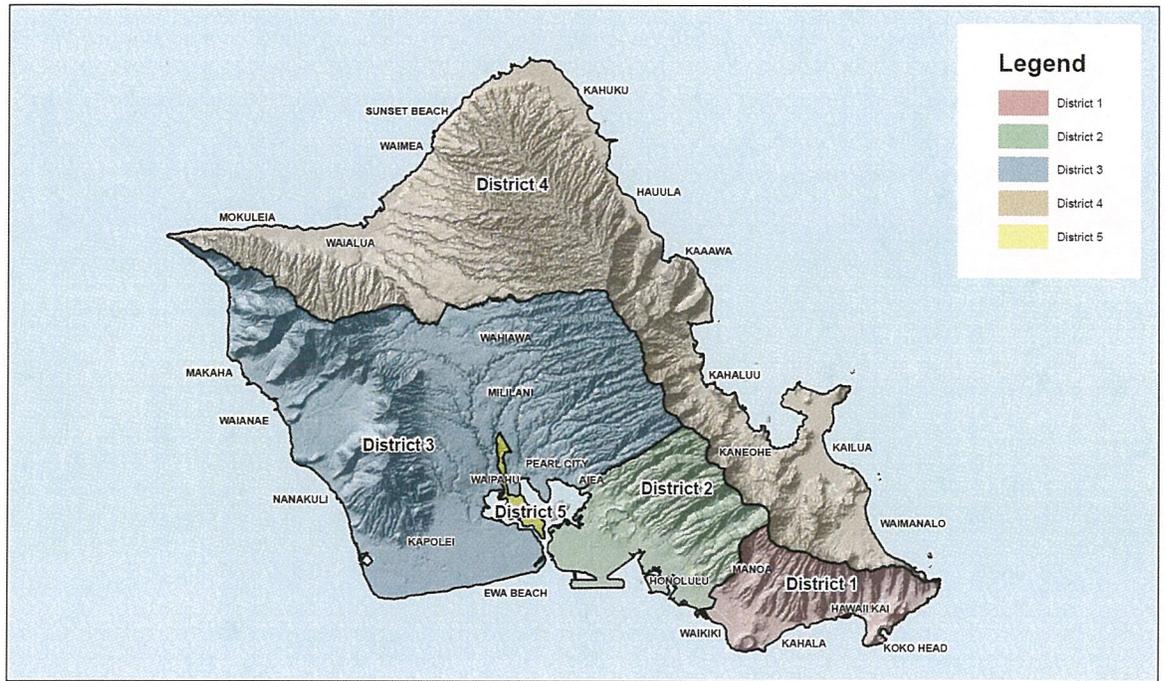
Exhibit A

Park Districts

D1 - District I - East Honolulu - west of Makapuu Point along the south shore to east of Punahou Street
D2 - District II - West Honolulu - west of Punahou Street down Kalakaua ending at the Ala Wai Canal to east of Kaonohi Street
D3 - District III - Leeward - west of Kaonohi Street to Kaena Point along the leeward coast and up to Whitmore Village in Central Oahu
D4 - District IV - Windward - west of Makapuu Point along the windward coast line and the north shore to Kaena Point
D5 - District V - Patsy T Mink Central Oahu Regional Park, Waipio Peninsula Soccer Park, and Hans L'Orange Neighborhood Park

Exhibit A

Park Districts City and County of Honolulu



Prepared by: Honolulu Land Information System (HOLIS)
Department of Planning and Permitting, City & County of Honolulu
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Note: Data represented on this map is not intended to replace a site survey