OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 100
HONOLULU, HAWAII 96813-3077
TELEPHONE: (808) 768-3810 · FAX: (808) 768-3835

GLEN I. TAKAHASHI
CITY CLERK

February 11, 2021

Mr. Wesley T. Yokoyama, P.E., Director Designate
Department of Environmental Services
City and County of Honolulu
Kapolei, Hawaii 96707

Dear Mr. Yokoyama:

I am transmitting the original Rules relating to Title 13, Chapter 1 of the Department of Environmental Services, filed by your office on February 10, 2021 and to take effect on February 20, 2021.

Sincerely,

GLEN I. TAKAHASHI
City Clerk

GT/ah

Attachment

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU
1000 ULUOHIA STREET, SUITE 308, KAPOLEI, HAWAII 96707
TELEPHONE: (808) 768-3486 • FAX: (808) 768-3487 • WEBSITE: http://envhonolulu.org

RICK BLANGIARDI
MAYOR

WESLEY T. YOKOYAMA, P.E.
DIRECTOR DESIGNATE

MICHAEL O'KEEFE
DEPUTY DIRECTOR

ROSS S. TANIMOTO, P.E.
DEPUTY DIRECTOR

IN REPLY REFER TO:
DIR 21-13

February 9, 2021

MEMORANDUM

TO: Glen I. Takahashi
Office of the City Clerk

FROM: Wesley T. Yokoyama, P.E., Director Designate

SUBJECT: Administrative Rules
Department of Environmental Services

Transmitted for filing pursuant to the Hawaii Revised Statutes is the amended, Administrative Rules and Regulations for the Department of Environmental Services to comply with ordinance 19-30.

After filing, please contact our office at 768-3486 for pick-up of file-stamped copies.

Attachments

'21FEB10 AM 9:35 CITY CLERK

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU
1000 ULUOHIA STREET, SUITE 308, KAPOLEI, HAWAII 96707
TELEPHONE: (808) 768-3486 • FAX: (808) 768-3487 • WEBSITE: http://envhonolulu.org

RICK BLANGIARDI
MAYOR

WESLEY T. YOKOYAMA, P.E.
DIRECTOR DESIGNATE

MICHAEL O'KEEFE
DEPUTY DIRECTOR

ROSS S. TANIMOTO, P.E.
DEPUTY DIRECTOR

IN REPLY REFER TO:
RR 21-005

February 3, 2021

MEMORANDUM

TO: The Honorable Rick Blangiardi, Mayor

VIA: Michael D. Formby, Managing Director Designate

Paul S. Aoki, Acting Corporation Counsel
Department of the Corporation Counsel

FROM: Wesley T. Yokoyama, P.E., Director Designate

SUBJECT: Adoption of Amended Rules for the Department of Environmental Services

Attached for your review and appropriate action is the amended Administrative Rules and Regulations for the Department of Environmental Services to comply with Ordinance 19-30. A public hearing was held on January 15, 2021, in accordance with Chapter 91, Hawaii Revised Statutes. Written and oral testimonies were received and reviewed by the department.

The proposed amendments and rules update the applicability to administer and enforce of Chapter 41, Revised Ordinances of Honolulu. These rules authorize the Department of Environmental Services to deny or grant exemptions for food vendors complying with Ordinance 19-30, Section 41-27.3 upon application and the provision of sufficient evidence that there are no reasonable alternatives available to the food vendor to comply, or compliance with the restrictions of Section 41-27.2, would cause significant hardship for the food vendor. The rules, also, authorize the department to grant or deny an "Industry Exemption" upon application and the provision of sufficient evidence that compliance with Section 41-27.2 would cause hardship to the food

service industry. Further, the department may grant an exemption to businesses that sell restricted service ware and food ware under Section 41-27.4 upon application and the provision of sufficient evidence that there are no reasonable alternatives available to the business to comply, or compliance with the prohibition would cause significant hardship for the business. The rules further comply with the formatting requirements of the Hawaii Administrative Rules Drafting Manual, third edition ("HAR Drafting Manual").

The Department of Environmental Services proposes amendments to Title 13, Chapter 1, including changes to the following:

1. Sections 13-1-1, 13-1-2, 13-1-22 and 13-1-23 are amended to update the applicability of the rules to include the administration and enforcement of Chapter 41, Revised Ordinances of Honolulu.

2. Section 13-1-15, Section 13-1-16 and 13-1-30 are amended to refer to subchapters of Title 13, Chapter 1 of the rules, instead of articles.

3. Section 13-1-33 is amended to make a technical and nonsubstantive amendment.

4. Section 13-1-38 is amended to correct a reference to section 13-1-34 of the rules.

5. Subchapter 5, consisting of Sections 13-1-46 to 13-1-52, is added to establish procedures for exemption from the restrictions on polystyrene foam food ware, disposable plastic service ware and disposable plastic food ware, including the following new sections:

    - 13-1-46 Purpose
    - 13-1-47 Definitions
    - 13-1-48 Applicability of subchapter 1
    - 13-1-49 Application of exemption
    - 13-1-50 Decision on application
    - 13-1-51 Withdrawal of request
    - 13-1-52 Application to renew exemption

Should you have any questions, please call me at 768-3486.

Attachments

APPROVED AS TO FORM AND LEGALITY:

Paul S. Aoki, Acting Corporation Counsel
Department of the Corporation Counsel

RECOMMEND APPROVAL:

Michael D. Formby
Managing Director Designate

APPROVED:

Rick Blangiardi
Mayor

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

Amendment and Compilation of Title 13, Chapter 1
City and County of Honolulu Administrative Rules

February 4, 2021

SUMMARY

1. §§13-1-1 to 13-1-2 are amended.

2. §§13-1-15 to 13-1-16 are amended.

3. §§13-1-22 to 13-1-23 are amended.

4. §13-1-30 is amended.

5. §13-1-33 is amended.

6. §13-1-38 is amended.

7. Subchapter 5, consisting of §§13-1-46 to 13-1-52 is added.

8. Chapter 1 is compiled.

CITY AND COUNTY OF HONOLULU
ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF ENVIRONMENTAL SERVICES

CHAPTER 1

RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER 1 GENERAL PROVISIONS

§13-1-1 Purpose
§13-1-2 Definitions
§13-1-3 Mailing address
§13-1-4 Department's business hours
§13-1-5 Time and place for the filing of documents
§13-1-6 Method of filing documents
§13-1-7 Date of filing
§13-1-8 Format of documents
§13-1-9 Computation of time
§13-1-10 Additional time after notification by mail
§13-1-11 Rulemaking
§13-1-12 Declaratory rulings
§13-1-13 Public hearings
§13-1-14 Notice of decisions without public hearing

SUBCHAPTER 2 PUBLIC RECORDS

§13-1-15 Purpose
§13-1-16 Definitions
§13-1-17 Official records of the Department
§13-1-18 Retention of documents
§13-1-19 Inspection of public records
§13-1-20 Copies of public records
§13-1-21 Request for information

SUBCHAPTER 3 ENFORCEMENT

§13-1-22 Applicability
§13-1-23 Definitions
§13-1-24 Notice of violation
§13-1-25 Notice of order
§13-1-26 Other enforcement orders

§13-1-27 Addition of unpaid civil fines to taxes, fees and charges collected by the City
§13-1-28 Referral to a collection service

SUBCHAPTER 4 APPEALS

§13-1-29 Purpose
§13-1-30 Definitions
§13-1-31 Appearance and practice before the Department
§13-1-32 Computation of time
§13-1-33 Form of pleadings
§13-1-34 Requirements and fees for filing
§13-1-35 Petition for appeal
§13-1-36 Mandatory filing deadline
§13-1-37 Withdrawal of petition
§13-1-38 Prehearing procedure
§13-1-39 Intervention
§13-1-40 Contested case, notice hearing and records
§13-1-41 Rules of evidence; official notice
§13-1-42 Burden of proof
§13-1-43 Failure to appear
§13-1-44 Decision and order
§13-1-45 Judicial remand

SUBCHAPTER 5 EXEMPTION FROM RESTRICTIONS ON POLYSTYRENE FOAM FOOD WARE, DISPOSABLE PLASTIC SERVICE WARE AND DISPOSABLE PLASTIC FOOD WARE

§13-1-46 Purpose
§13-1-47 Definitions
§13-1-48 Applicability of Subchapter 1
§13-1-49 Application for exemption
§13-1-50 Decision on application
§13-1-51 Withdrawal of request
§13-1-52 Application to renew exemption

SUBCHAPTER 1
GENERAL PROVISIONS

§13-1-1 Purpose
§13-1-2 Definitions
§13-1-3 Mailing address
§13-1-4 Department's business hours
§13-1-5 Time and place for the filing of documents
§13-1-6 Method of filing documents
§13-1-7 Date of filing
§13-1-8 Format of documents
§13-1-9 Computation of time
§13-1-10 Additional time after notification by mail
§13-1-11 Rulemaking
§13-1-12 Declaratory rulings
§13-1-13 Public hearings
§13-1-14 Notice of decisions without public hearing

§13-1-1 Purpose. These rules apply to and govern the practices and procedures of the Department in fulfilling its duties under chapters 91 and 92F, Hawaii Revised Statutes, administering chapters 9, 14, and 41, Revised Ordinances of Honolulu, and enforcing the rules, permits, or orders of the Department. [Eff 12/9/12; am and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-2 Definitions. As used in this Subchapter, unless the context clearly requires otherwise:

"Action of the Director" or "Director's action" means a decision by the Director regarding an application pursuant to chapter(s) 9, 14, and/or 41, Revised Ordinances of Honolulu, a petition for declaratory ruling pursuant to section 13-1-12, or an enforcement order issued by the Director pursuant to chapter(s) 9, 14, and/or 41, Revised Ordinances of Honolulu, or chapter 13-1, subchapter 3.

"City" means the City and County of Honolulu.

"Days" means calendar days, including weekends and holidays, unless otherwise indicated.

"Department" means the City and County of Honolulu Department of Environmental Services.

"Director" means the Director of the Department of Environmental Services of the City and County of Honolulu or the Director's authorized representative.

"Permit" means any permit or license issued by the Director or the Department of Planning and Permitting on the Director's behalf.

"Permit condition" or "condition of any permit" means a requirement imposed on a permittee by a Permit.

"Public hearing" means a hearing required by law to be conducted prior to an action of the Director. Excluded are contested case proceedings governed by Subchapter 4 of these rules.

"Rule" means a statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy implemented by the Department, or describes the organization, procedure, or practice requirements of the Department. The term does not include regulations concerning only the internal management of the Department, declaratory rulings issued by the Director, intra-agency memoranda, or other documents that have not been adopted pursuant to rule-making procedures. [Eff 12/9/12; am and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-3 Mailing address. All submissions to the Director must be by mail or delivery and addressed to the Director of the Department of Environmental Services at 1000 Uluohia Street, Suite 308, Kapolei, Hawaii 96707. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-4 Department's business hours. The Department shall be open from 7:45 a.m. to 4:30 p.m. of each weekday unless otherwise provided by statute or executive order. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-5 Time and place for the filing of documents. All documents, including applications, written comments on applications, request for opinion, submittals, correspondence, information, reports, memoranda, and any other papers required or permitted to be filed with the Department, in any proceeding, shall be filed at the Department at its mailing address within

the time limit, if any, prescribed by statute, rule of the Department, or order of the Department. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-6 Method of filing documents. Any person may file a document with the Department by hand delivering the document to the Department or by mailing the document to the Department's mailing address. If the document is mailed, the correct postage shall be prepaid by the addresser. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-7 Date of filing. The Department shall promptly affix the date and time of receipt to the original of each document received by the Department. The date on which the Department receives the document shall be deemed the date of filing. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-8 Format of documents. Each document filed with the Department by any person shall include the person's name and mailing address. The document shall be signed in ink by the person or the person's authorized agent 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 the person's knowledge, information, and belief, every statement contained in the document is true and no statement is misleading; and that the document is not interposed for delay. Each document shall be plainly legible. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-9 Computation of time. Whenever the procedures in these rules specify a period of days for a particular action, it must be completed by 4:30 p.m. on the last day specified in the period, except when the specified period of days ends on a

public holiday, weekend, or day on which the City is otherwise not open for business. In such cases, the action shall be completed by 4:30 p.m. of the next business day. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-10 Additional time after notification by mail. Whenever any person in a proceeding held under the Department's rules has the right or is required to do some act within a prescribed period of time after the Department provides notification to the person by mail, two (2) days shall be added to the prescribed time. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-11 Rulemaking. (a) The Director may, at any time, adopt, amend, or repeal any rule of the Department at his discretion pursuant to those procedures specified under section 91-3, Hawaii Revised Statutes.

(b) Any person may petition the Director to adopt, amend, or repeal the Department's administrative rules.

(c) Petitions for rulemaking must be in writing and contain the following information:

(1) The petitioner's name, mailing address, and phone number;

(2) A statement of the reasons in support of the proposed rule, amendment, or repeal;

(3) A statement regarding the petitioner's interest in the matters set forth in the petition; and

(4) A draft of the proposed rule or amendment, in Ramseyer format.

(d) Standard for Decisions. The Director may approve a petition for rulemaking only if the proposed rule, amendment, or repeal is in the best interest of the Department and can be implemented without excessive cost to the Department.

(e) Disposition. Within thirty (30) days of receiving a petition for rulemaking, the Director shall take action on the petition by denying the petition, in writing, stating the reasons for the denial, or by initiating rulemaking procedures in accordance with section 91-3, Hawaii Revised Statutes and section 13-1-11. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS

§91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-6)

§13-1-12 Declaratory rulings. (a) Any interested person may petition the Director for a declaratory ruling as to the applicability of any statute or ordinance relating to the Department, any rule or order of the Department, or the condition of any permit issued by the Department.

(b) Contents of the petition. A petition for declaratory ruling must contain:

(1) The petitioner's name, address, and telephone number;
(2) A complete statement of relevant facts;
(3) A clear designation of the statutes, ordinances, rules, orders and/or permit conditions concerned;
(4) A description of the controversy or uncertainty involved;
(5) A statement as to the petitioner's opinion or position; and
(6) Justification, legal arguments, and references to legal authorities in support of the petitioner's position.

(c) The filing fee for a Declaratory Ruling is $300.00 and must be submitted concurrently with a Petition for Declaratory Ruling. Failure to submit the required fee concurrently with the Petition for Declaratory Ruling will result in the return of the Petition for Declaratory Ruling without further action by the Department.

(d) Disposition. The Director must deny a petition for declaratory ruling for failure to comply with the requirements for a petition for declaratory ruling within thirty (30) days. In all other cases, the Director may deny the petition, in writing, stating the reasons therefore, or issue a declaratory ruling on the matters contained in the petition within sixty (60) days. The Director must notify the petitioner of any action on the petition in writing and transmit such notice to the petitioner by certified mail.

(e) Denial of a petition for 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 controversies;
(2) The petitioner's interest in the matter is insufficient to confer the petitioner with standing to seek judicial relief;

(3) The matters set forth in the petition are under litigation by the City or may reasonably be expected to be litigated by the City;
(4) The matter is not within the jurisdiction of the Department; or
(5) For other good cause.

(f) Applicability of declaratory rulings. A declaratory ruling applies only to the specific factual situation stated in the petition or in the Director's ruling. A declaratory ruling does not apply in situations involving different facts or where facts not considered by the Director in issuing a declaratory ruling exist. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-8)

§13-1-13 Public hearings. (a) Unless otherwise provided by law, notice of a public hearing provided by the Department must be published in a newspaper of general circulation within the City at least ten (10) days prior to the date of the public hearing. A copy of the notice must be kept on file at the Department. The Director shall provide individual notice of a public hearing to the petitioner and any applicant directly concerned by the public hearing by regular mail no less than ten (10) days prior to the date of the public hearing.

(b) The time and place of a public hearing shall be in accordance with existing statutory requirements. Absent specific statutory requirements, public hearings provided by the Department shall be at a time and location determined by the Director, provided that due consideration is given to the public convenience.

(c) The Director shall appoint a Hearings Officer to preside over public hearings conducted by the Department. The Hearings Officer shall begin each public hearing by reading a copy of the public notice and outlining the procedure to be followed. The Hearings Officer shall provide all interested persons with an opportunity to present written or oral testimony regarding the subject matter of the hearing, subject to reasonable limitations on the length and/or duration of submissions. Written testimony may be accepted by the Hearings Officer beginning on the date notice of the public hearing is published until the conclusion of the public hearing. The Hearings Officer may call upon an applicant or the Department staff to provide factual clarification or explanation of the

issues and may continue a public hearing to a later time or date for good cause.

(d) All submittals shall be made a part of the hearing record and preserved in the Department's file, which shall contain a written summary of the public hearing minutes, an audio recording of the public proceedings, or a transcript. The public hearing record shall be available to the public.

(e) Decisions after public hearings. Where the Director renders a decision on a petition or application submitted to the Department after a public hearing, the Director shall transmit notice of the Director's decision to the petitioner or applicant by certified mail, with return receipt requested. Persons who participated in a public hearing by submitting written or oral testimony may submit a written request for notice of the Director's decision at any time prior to the issuance of Director's decision. The request for notice of the Director's decision shall contain the person's name, address, and telephone number. Notice of the Director's decision, including a copy thereof, shall be provided to all requesting parties by certified mail, with return receipt requested. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-3, 91-9)

§13-1-14 Notice of decisions without public hearing. Where a public hearing is not required prior to a decision by the Director:

(a) The Director shall transmit a copy of the Director's decision to the applicant or petitioner by delivery or certified mail, with return receipt requested at the address provided by the applicant or petitioner.

(b) The Director shall transmit a copy of the Director's decision to person(s) requesting notice of the Director's decision, if the Director receives a written request for notice of his decision before issuing his decision. Service of such notice shall be by certified mail, with return receipt requested, and addressed to the address provided by the requesting person(s). [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

SUBCHAPTER 2
PUBLIC RECORDS

§13-1-15 Purpose
§13-1-16 Definitions
§13-1-17 Official records of the Department
§13-1-18 Retention of documents
§13-1-19 Inspection of public records
§13-1-20 Copies of public records
§13-1-21 Request for information

§13-1-15 Purpose. This Subchapter prescribes the process and procedure for obtaining records pursuant to chapter 92F, Hawaii Revised Statutes, and chapter 2-71, subtitle 7, Hawaii Administrative Rules. [Eff 12/9/12; am and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 92F-11, 92F-26)

§13-1-16 Definitions. As used in this Subchapter, unless the context clearly requires otherwise:

"Department" means the City and County of Honolulu Department of Environmental Services.

"Person" means any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity, and shall include responsible corporate officers.

"Record" means information maintained by the Department, whether in written, auditory, visual, electronic, or other physical form. [Eff 12/9/12; am and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 92F-11, 92F-26)

§13-1-17 Official records of the Department. The Custodian of Records shall be responsible for the custody and maintenance of the Department's official records. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 92F-11, 92F-26

§13-1-18 Retention of documents. All documents filed with or presented to the Department shall be retained in the Department's official records in accordance with the City's records retention policy for the period required by law. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 92F-11, 92F-26)

§13-1-19 Inspection of public records. The Department's records shall be available for inspection by any person, in the manner provided in chapter 92, Hawaii Revised Statutes, unless the records are accorded privileged or confidential treatment pursuant to law. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 92F-11, 92F-26)

§13-1-20 Copies of public records. The Department shall furnish copies of the Department's records to any person upon payment of the statutory fee, unless otherwise provided by law. Payment of the statutory fee shall not be required of any department or agency of the state government or a county government. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 92F-11, 92F-26)

§13-1-21 Request for information. (a) Any person may request information on any matter relating to the agency by inquiring during regular business hours at the agency's office or by submitting a written request to the agency.

(b) Requests for the inspection of Department records or copies of the same may be made using the form provided by the Department.

(c) Requests for information and all actions stemming from or related to requests for information shall be made in accordance with chapter 92F, Hawaii Revised Statutes, rules adopted under that chapter, and any other applicable laws. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4,

6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 92F-11, 92F-26)

SUBCHAPTER 3
ENFORCEMENT

§13-1-22 Applicability
§13-1-23 Definitions
§13-1-24 Notice of violation
§13-1-25 Notice of order
§13-1-26 Other enforcement orders
§13-1-27 Addition of unpaid civil fines to taxes, fees and charges collected by the City
§13-1-28 Referral to a collection service

§13-1-22 Applicability. This Subchapter shall apply to the actions of the Director in the administration and enforcement of chapters 9, 14, and 41, Revised Ordinances of Honolulu, the permits and licenses issued thereunder, and the duly adopted rules of the Department. [Eff 12/9/12; am and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-23 Definitions. As used in this Subchapter, unless the context clearly requires otherwise:

"Agency" means a state or county board, office, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

"City" means the City and County of Honolulu.

"Civil fine" means any monetary penalty imposed by the Director or a court of competent jurisdiction to enforce a violation of the administrative rules of the Department of Environmental Services or chapter(s) 9, 14, and/or 41, Revised Ordinances of Honolulu.

"Civil fines program" means a program for enforcing violations of the administrative rules of the Department of Environmental Services or chapter(s) 9, 14, and/or 41, Revised Ordinances of Honolulu, by imposing civil fines for violations and attaching unpaid fines to taxes, fees, and charges collected by the City.

"Code" means chapter(s) 9, 14, and/or 41, Revised Ordinances of Honolulu, and shall include any administrative rule adopted thereunder and the conditions of any permit issued by the Director pursuant thereto.

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

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after opportunity for a hearing.

"Days" means calendar days, including weekends and holidays, unless otherwise indicated.

"Department" means the Department of Environmental Services, City and County of Honolulu.

"Director" means the Director of the Department of Environmental Services of the City and County of Honolulu or the Director's authorized representative.

"Hearings officer" means the individual or entity designated to conduct hearings by the Director.

"Party" means the Department and/or any person who participated in an agency proceeding as complainant, respondent, or intervener in an agency proceeding.

"Person" means any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity, and shall include responsible corporate officers.

"Recurring violation" means a repetition of the same type of violation by the same person.

"Responsible Corporate Officer" or "RCO" means any officer or employee of a business entity, regardless of corporate form, who: (1) has a position of responsibility that may influence corporate policies or actions and (2) causes, enables, or allows a violation to take place as a result of acts or omissions that contribute to or result in a violation.

"Unpaid civil fine" means any outstanding civil fine due and owing to the City by a violator, in whole or in part, for more than thirty (30) days. [Eff 12/9/12; am and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-24 Notice of violation. (a) The Director may issue a notice of violation (NOV) upon determining that there is a violation of any Code.

(b) The Director shall serve the NOV upon the violator, which shall be the person responsible for the violation and may include the fee owner, leaseholder, sub-leaseholder, assignee, or tenant of the real property on which the violation occurs, the permittee of any permit issued by Director, and any general

contractor or subcontractor responsible for work on the premises.

(c) Service of the NOV shall be as specified by the appropriate ordinance. Where the means of service is not specified by ordinance, service shall be by delivery or certified mail; provided that the service of NOVs for violations of sections 9-1.4(d) and 9-4.8, Revised Ordinances of Honolulu, may be by hand delivery, certified mail, or posting upon the property on which the violation occurs.

(d) The NOV shall describe each violation separately and state what action, if any, is necessary to correct the violation. The NOV shall also state the date by which the necessary corrective actions must be completed in order to avoid the imposition of civil fines. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2, ROH §§9-5.3, 9-9.3, 14-5.15, 14-5.17, 14-12.24, 41-27.6)

§13-1-25 Notice of order. (a) The Director may issue a notice of order (NOO) upon determining that a violation cited in a NOV remains uncorrected after the deadline specified in the NOV or upon determining that a violation is a reoccurring violation of any Code.

(b) The Director shall serve the NOO upon the violator, which shall be the person responsible for the violation and may include the fee owner, leaseholder, sub-leaseholder, assignee, or tenant of the real property on which the violation occurs, the permittee of any permit issued by Director, and any general contractor or subcontractor responsible for work on the premises.

(c) Service of the NOO on the violator shall be as specified by the appropriate ordinance. Where the means of service is not specified by ordinance, service shall be by delivery or certified mail; except that the service of NOOs for violations of sections 9-1.4(d) and 9-4.8, Revised Ordinances of Honolulu, may be by hand delivery, certified mail, or posting upon the property on which the violation occurs. Where service of the NOO is by posting, a copy of the NOV and NOO shall also be sent to the violator by certified mail within three (3) business days of posting.

(d) The NOO shall identify the uncorrected violation and corresponding NOV or identify a prior violation and describe each reoccurring violation separately. The NOO shall state the amount of the civil fine imposed and the amount of additional civil fines that will be imposed until the date of correction,

if any. Alternatively, the NOO may state the amount of the civil fine imposed and the amount of a subsequent civil fine that will be imposed unless the violation is corrected by a specified date.

(e) The amount of all civil fines imposed by NOO shall be in accordance with the ordinances authorizing the imposition of such fines. Where no minimum or maximum fine is established by ordinance, the civil fine imposed by a NOO shall be no less than fifty dollars ($50.00) and no more than twenty-five thousand dollars ($25,000.00), per violation, per day. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2, ROH §§9-5.1, 9-5.3, 9-9.3, 14-5.15, 14-5.17, 14-5.19, 14-12.24, 14-12.28, 41-27.6)

§13-1-26 Other enforcement orders. In addition to NOVs and NOOs the Director may issue any alternative order authorized by ordinance. The Director may incorporate the requirements of any order authorized by ordinance into the provisions of a NOV and/or NOO issued under these rules. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2; ROH §§9-5.1, 9-5.3, 9-9.3, 14-5.1, 14-5.5, 14-5.7, 14-5.9, 14-5.10, 14-5.11, 14-5.12, 14-5.17. 14-12.26, 41-27.6)

§13-1-27 Addition of unpaid civil fines to taxes, fees and charges collected by the City. (a) An unpaid civil fine that remains due and owing after all rights to contested case hearing have been exhausted, may then be added by administrative action of the Director to any taxes, fees and/or charges collected by the City, other than charges for residential water use or residential sewer charges.

(b) Once a civil fine is attached to any license, approval, or permit fee, the license, permit, or approval shall not be issued or renewed until the unpaid civil fine is paid in full.

(c) 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
	Shoreline variance application fee
	Eligible Tax, Fee or Charge
	Subdivision approval 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
Customer Service Department	Motor vehicle registration fee and vehicle weight tax
	Motor vehicle transfer of ownership fee
	Drivers license renewal fee
	Business license fee
Liquor Commission	Liquor license and renewal fees
Department of Environmental Services	Refuse collection fee
	Refuse disposal fee
	Nonresidential sewer fee

(d) Prior to administratively adding unpaid civil fines to any taxes, fees, or charges collected by the City, the Director shall provide written notification to any person affected by the addition of unpaid civil fines to any taxes, fees, or charges collected by the City. Such notice shall not be construed to provide any additional rights for further review or appeal. Such notice shall provide statements specifying, at a minimum:

(1) The particular tax, fee, or charge to which any unpaid civil fine has been administratively added;

(2) The effective date of the addition of the unpaid civil fine to the tax, fee, or charge; and

(3) The amount of the unpaid civil fine that has been added to the tax, fee, or charge.

[Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §§46-1.5; RCH §§4-105.4, 6-803; ROH §§1-9.1, 1-19.3, 1-19.4) (Imp: ROH §§1-19.3, 1-19.4).

§13-1-28 Referral to collection services. An unpaid civil fine that remains due and owed after all rights to administrative appeal have been exhausted may be referred by the Director to a collection service. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: ROH §§1-19.3, 1-19.4; ROH §§9-5.1, 9-5.3, 9-9.3, 14-5.15, 14-5.17, 14.-5.19, 41-27.6)

SUBCHAPTER 4
APPEALS

§13-1-29 Purpose
§13-1-30 Definitions
§13-1-31 Appearance and practice before the Department
§13-1-32 Computation of time
§13-1-33 Form of pleadings
§13-1-34 Requirements and fees for filing
§13-1-35 Petition for appeal
§13-1-36 Mandatory filing deadline
§13-1-37 Withdrawal of petition
§13-1-38 Prehearing procedure
§13-1-39 Intervention
§13-1-40 Contested case, notice hearing and records
§13-1-41 Rules of evidence; official notice
§13-1-42 Burden of proof
§13-1-43 Failure to appear
§13-1-44 Decision and order
§13-1-45 Judicial remand

§13-1-29 Purpose. These rules shall govern appeals from the actions of the Director and shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-30 Definitions. As used in this Subchapter, unless the context clearly requires otherwise:

"Action of the Director" or "Director's action" means a decision by the Director regarding an application pursuant to chapter(s) 9 and/or 14, Revised Ordinances of Honolulu, a petition for declaratory ruling pursuant to section 13-1-12, or an enforcement order issued by the Director pursuant to chapter(s) 9, 14, and/or 41, Revised Ordinances of Honolulu, or chapter 13-1, subchapter 3.

"City" means City and County of Honolulu.

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for Department hearing.

"Days" means calendar days, including weekends and holidays, unless otherwise indicated.

"Department" means the City and County of Honolulu Department of Environmental Services.

"Director" means the Director of the City and County of Honolulu Department of Environmental Services or the Director's authorized representative.

"Hearings Officer" means the Director's authorized representative for hearing appeals from the actions of the Director pursuant to these rules.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Department proceeding.

"Petitioner" means the individual or individuals who have submitted a Petition for Appeal requesting a contested case hearing regarding an action of the Director.

"Petition for appeal" means a request for a contested case hearing and appeal from an action of the Director.

"Petition for intervention" means a petition to the Hearings Officer requesting admission to a contested case proceeding as a real party in interest.

"Rule" means a Department statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the Department. The term does not include regulations concerning only the internal management of the Department and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued by the Director. [Eff 12/9/12; am and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-31 <u>Appearance and practice before the Department.</u> (a) A person may appear in the person's own behalf; a partner may represent the partnership; an officer, trustee, or authorized employee of a corporation or trust or association may represent the corporation, trust or association; and an officer or employee of an agency may represent the agency in any proceeding before the Department.

(b) A person may be represented by counsel in any proceeding under these rules.

(c) A person shall not be represented in any proceeding before the Department or a Hearings Officer except as stated in subsections (a) or (b).

(d) When a person who is not an attorney acts in a representative capacity and appears in person or signs any document or other papers in practice before the Department or Hearings Officer, the person shall show the person's authority to act in that capacity. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-32 Computation of time. Whenever the procedures specify a period of days for the completion of a particular action, the action shall be completed by 4:30 p.m. on the last day specified in the period, except when the specified period of days ends on a public holiday, weekend, or day on which the City is otherwise not open for business. In such cases, the action shall be completed by 4:30 p.m. of the next business day. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-33 Form of pleadings. All pleadings and documents to be filed shall be typewritten, printed, photocopied, or otherwise similarly prepared by a duplication process that will produce clear and permanent copies equally legible to printing, upon unruled white paper of standard quality, 8 1/2 x 11 inches in size, and each sheet shall have a margin at the top and bottom of 1 inch. The left-hand and right-hand side margin shall be not less than 1 inch. Such documents shall be typewritten in heavily inked black ribbon or printed in black. The type shall be standard 12 point font or equivalent. The lines on each page shall be double-spaced or one and one-half spaced. All pages shall be numbered consecutively at the bottom and shall be firmly bound together at the top. Exhibits may be fastened to pages of the specified size. Signatures and all other handwritten entries on documents shall be in blue or black ink. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-34 Requirements and fees for filing. (a) The filing fee for a petition for appeal shall be determined by the following schedule and shall be submitted concurrently with a

petition for appeal. Failure to submit the required fee concurrently with the petition for appeal shall result in the return of the petition for appeal without further action by the Hearings Officer or Department.

Schedule of Fees

Violation Amount	Filing Fee For Petition For Appeal
$1 - $250	$50
$251 - $999	$100
Greater than $1,000	$300
Appeals from Actions of the Director that do not impose a civil fine	$300

(b) When a pleading or other document requiring service is presented for filing, the original shall be accompanied with a sufficient number of copies for service. The original shall be kept on file by the Hearings Officer. Service of documents to parties to a proceeding must be made with filed or certified copies of the document(s) no less than one (1) business day after filing. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§13-1-35 Petition for appeal. (a) Any person specially, personally, and adversely affected by an Action of the Director may appeal the Director's action by submitting a written petition for appeal setting forth:

(1) All pertinent facts; and
(2) The reasons why the Petitioner believes the Director's action is based on an erroneous finding of material fact, arbitrary or capricious

decision making, or a manifest abuse of discretion.

Petitions for appeal may be made by using the form provided by the Department.

(b) Petitions for appeal may not exceed ten (10) pages in length.

(c) Claims not raised in the petition for appeal shall not be heard by the Hearings Officer. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 91-9; ROH §§9-5.1, 14-5.18, 14-12.27, 41-27.6)

§13-1-36 Mandatory filing deadline. A petition for appeal must be filed within thirty (30) days of the mailing or personal service of the Director's action. If the petition for appeal is not filed within thirty (30) days, it shall be dismissed upon a motion by the Director. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 91-9; ROH §9-5.1, 14-5.18)

§13-1-37 Withdrawal of petition. A written request for the withdrawal of a petition for appeal shall be approved by the Hearings Officer if submitted with the concurrence of all appearing parties. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§ 13-1-38 Prehearing procedure. (a) Within ten (10) days of the filing of a petition and payment of the filing fee specified in section 13-1-34 of these rules, the Hearings Officer shall transmit copies of the petition to the Director and the owner, leaseholder, sub-leaseholder, assignee, or tenant of the real property, if they are not the petitioner.

(b) The Hearings Officer shall issue a scheduling order to the parties no less than fifteen (15) days setting a contested case hearing which must be no less than sixty (60) days from the date of the scheduling order.

(c) The Hearings Officer shall require the submission of written briefs by the parties. The Petitioner's brief and Interveners' brief shall be submitted no less than twenty-one

(21) days prior to the contested case hearing date. The Director's brief and the briefs of any interveners shall be submitted no less than seven (7) days prior to the contested case hearing date.

(d) Hearing briefs shall contain:

(1) A limited statement of the facts and arguments to be presented at the contested case hearing, all of which shall not exceed fifteen (15) pages;

(2) A list of witnesses and a statement as to what each witness will testify about; and

(3) All exhibits to be presented at the hearing.

(e) Motions and memoranda may be submitted to the Hearings Officer. However, no motion may be filed less than twenty-one (21) days prior to the hearing.

(f) Witness subpoena requests shall be filed together with written briefs.

(g) All parties shall provide copies of all filed documents to the other parties and shall file written certification as to the transmittal of documents to the parties stating the name of the document provided, the date, time and means of transmittal, and the address at which the document was provided. [Eff 12/9/12; am and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§ 13-1-39 Intervention. (a) Any interested person may submit a petition to intervene in a contested case hearing within thirty (30) days of the filing of a petition for appeal.

(b) The parties to the proceeding in which intervention is sought may file memoranda responsive to the petition within ten (10) days of service.

(c) Upon a hearing on the petition to intervene, intervention shall be granted to any party who demonstrates that they will be so directly and personally affected by the Director's action that their interests are distinguishable from the general public. Intervention shall be denied if the interests of an intervening party are substantially similar to those of an admitted party. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§ 13-1-40 Contested cases, notice hearing and records. (a) In any contested case, all parties shall be afforded an

opportunity for hearing after reasonable notice. The notice shall be provided by the Hearings Officer and served upon the parties by certified mail, with return receipt requested. At a minimum, the notice shall be served upon the parties no less than seven (7) days prior to the hearing and shall include a statement of:

(1) The date, time, place, and nature of the hearing;
(2) The legal authority under which the hearing is to be held;
(3) The particular sections of the statutes and rules involved;
(4) An explicit statement in plain language of the issues involved and the facts alleged by the Department in support thereof; provided that if the Hearings Officer is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished;
(5) The fact that any party may retain counsel, if the party so desires, and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.

(b) At the hearing, the parties shall be afforded an opportunity to call witnesses, cross-examine witnesses, present evidence, and make legal argument on all issues involved.

(c) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(d) The presiding Hearings Officer shall have the power to give notice of the hearing, administer oaths, compel the attendance of witnesses and the production of documentary evidence, examine witnesses, issue subpoenas, rule on offers of proof, receive relevant evidence, hold conferences before and during hearings, rule on objections or motions, fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing authorized by law that are necessary for the orderly and just conduct of a hearing. However, the Hearings Officer may not waive or suspend the requirements of these rules without the express written consent of all parties

(e) For the purpose of contested case hearings, the record shall include:

(1) All pleadings, motions, intermediate rulings;
(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
(3) Offers of proof and rulings thereon;
(4) Proposed findings and exceptions;
(5) Report of the Hearings Officer who presided at the hearing; and
(6) Memoranda submitted to members of the agency in with their consideration of the case.

(f) The record of the proceedings shall only be transcribed, if necessary, for judicial review, or upon request of the Hearings Officer or any party. Where transcription is requested by a party, the requesting party shall be responsible for arranging the services of a stenographer and shall be responsible for all costs of transcription.

(g) No matters outside the record shall be considered by the Hearings Officer in making its decision, except as provided herein.

(h) For good cause shown, a contested case hearing may be continued by the Hearings Officer. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 91-9; ROH §§9-5.1, 9-9.3, 14-5.18, 14-12.27)

§ 13-1-41 Rules of evidence; official notice. (a) In contested cases, any oral or documentary evidence may be received; however, the Hearings Officer shall exclude all irrelevant, immaterial, or unduly repetitious evidence and shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original.

(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.

(d) The Hearings Officer may take notice of judicially recognizable facts. In addition, the Hearings Officer shall take notice of generally recognized technical or scientific facts within the specialized knowledge of the Department, provided that the parties shall be notified of the matters so noticed and

afforded an opportunity to contest the facts so noticed. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 91-9, 91-10; ROH §§9-5.1, 9-9.3, 14-5.18, 14-12.27, 41-27.6)

§ 13-1-42 Burden of proof. The party initiating the proceeding shall have the burden of proof, including the burden of producing evidence, as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§ 13-1-43 Failure to appear. If any party fails to appear at two (2) consecutive hearings on a matter, their right to a contested case hearing shall be waived and the Petition for Appeal shall be dismissed. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §91-2)

§ 13-1-44 Decision and order. (a) An appeal shall only be sustained if the Hearings Officer determines that the Director's action was predicated upon an erroneous finding of material fact, arbitrary or capricious decision-making, or a manifest abuse of discretion. In all other cases, the appeal shall be denied.

(b) Where an appeal is sustained, the Hearings Officer may reverse or modify the Director's action, provided, however, that the action of the Director may not be modified in excess of the Director's authority.

(c) The prevailing party shall prepare a proposed order for the Hearings Officer, which shall set forth proposed findings of fact and conclusions of law in separately numbered paragraphs.

(d) Any party objecting to the proposed order shall submit their objections to the Hearings Officer, in writing, no less than fifteen (15) days after service of the proposed order. The party submitting the proposed order shall be allowed to respond to any objections within seven (7) days.

(e) Where no objections to the proposed order are made, the Hearings Officer shall adopt the proposed order without further hearing. However, where objections to the proposed order are made, the Hearings Officer shall hold a hearing to adopt findings of fact, conclusions of law, and a decision and order. Within seven (7) days of the adoption of the final order, the Hearings Officer shall serve copies of the order upon the parties by delivery or registered mail.
[Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§ 1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 91-9, 91-12; ROH §§9-5.1, 9-9.3, 14-5.18, 14-12.27, 41-27.6)

§ 13-1-45 Judicial remand. (a) If a matter is remanded to the Department for further proceedings pursuant to section 91-14, Hawaii Revised Statutes, the judicial record shall be incorporated into the record of proceedings before the Department.

(b) Upon notice of the remand, the Hearings Officer shall schedule a public hearing within sixty (60) days of the remand. Notice of the hearing shall be transmitted to the parties by certified mail no less than fifteen (15) days prior to the public hearing.

(c) At the public hearing, the Hearings Officer shall identify the issues on remand and the scope of additional testimony or evidence that may be received based on the needs of the case and terms of the remand.

(d) The Hearings Officer shall conduct further proceedings pursuant to section 13-1-38 and may require additional briefs, witness lists, and exhibits lists of the parties. [Eff 12/9/12; comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 9-2.8, 9-5.3, 9-9.4, 14-1.3, 14-12.31, 41-27.7) (Imp: HRS §§91-2, 91-9, 91-14; ROH §§9-5.1, 9-9.3, 14-5.18, 14-12.27, 41-27.6)

SUBCHAPTER 5
EXEMPTION FROM RESTRICTIONS ON POLYSTYRENE FOAM FOOD WARE, DISPOSABLE PLASTIC SERVICE WARE AND DISPOSABLE PLASTIC FOOD WARE

§13-1-46 Purpose
§13-1-47 Definitions
§13-1-48 Applicability of Subchapter 1
§13-1-49 Application for exemption
§13-1-50 Decision on application
§13-1-51 Withdrawal of request
§13-1-52 Application to renew exemption

§13-1-46 Purpose. This Subchapter shall apply to the actions of the Department in the administration and enforcement of chapter 41, Revised Ordinances of Honolulu, and the duly adopted rules of the Department. [Eff and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 41-27.7) (Imp: HRS §91-2; ROH §§41-27.3, 41-27.4, 41-27.7)

§13-1-47 Definitions. As used in this Subchapter, unless the context clearly requires otherwise:

"Applicant" means a food vendor, industry applicant or entity that applies for an exemption from the restrictions of section 41-27.2, Revised Ordinances of Honolulu, or a business that applies for an exemption from the restrictions of section 41-27.4, Revised Ordinances of Honolulu.

"Day" means any calendar day, including weekends and holidays, unless otherwise indicated.

"Department" means the Department of Environmental Services, City and County of Honolulu.

"Director" means the Director of the Department of Environmental Services of the City and County of Honolulu or the Director's authorized representative. [Eff and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 41-27.7) (Imp: HRS §91-2; ROH §§41-27.3, 41-27.4, 41-27.7)

§13-1-48 Applicability of Subchapter 1. Except as otherwise provided in this Subchapter, sections 13-1-3 through 13-1-7, 13-1-9, and 13-1-10 of these rules shall apply to applications for exemptions. [Eff and comp FEB 20 2021] (Auth:

HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 41-27.7) (Imp: HRS §91-2, ROH §§41-27.3, 41-27.4, 41-27.7)

§13-1-49 Application for exemption. (a) In order to provide eligible applicants time to submit applications for exemptions, the Department shall postpone enforcement of section 41-27.2, Revised Ordinances of Honolulu, until April 1, 2021.

(b) Applicants shall file an application for exemption on a form issued by the Director.

(c) Information submitted on all application forms shall include, but not be limited to:

(1) Type of exemption requested;

(2) The information required by section 41-27.3, Revised Ordinances of Honolulu, as applicable to the type of exemption requested;

(3) Description of the prepared food applicant intends to sell, serve, or provide in the non-compliant product at issue; and

(4) Description of the polystyrene foam food ware, disposable plastic service ware, or disposable plastic food ware for which applicant seeks an exemption.

(d) Where an applicant applies for an exemption because there are no reasonable alternatives to the use of a non-compliant product, the information submitted on the application form shall include, but not be limited to:

(1) Detailed statement explaining why applicant cannot use a compliant product; and

(2) Detailed statement of the factual basis to support the requested determination that there is no reasonable alternative to the use of the non-compliant product at issue.

(e) Where an applicant applies for an exemption because compliance with section 41-27.2, Revised Ordinances of Honolulu, would cause significant hardship, the information submitted on the application form shall include, but not be limited to:

(1) The cost per unit of the non-compliant product at issue;

(2) A minimum of three bid invoices or statements from suppliers to establish the cost per unit of the compliant product;

(3) Detailed statement explaining the significant hardship that would be caused by using the compliant alternative; and

(4) Detailed statement of the factual basis to support the requested determination that use of a compliant product at issue would cause the applicant significant hardship and that there is no affordable compliant alternative.

(f) Where an applicant applies for an exemption because compliance with section 41-27.2, Revised Ordinances of Honolulu, would cause significant hardship, the applicant may provide additional documentation to support its application, including but not limited to profit and loss statements or other financial statements that demonstrate financial hardship and are prepared by the applicant's owner, bookkeeper, or a certified public accountant.

(g) Where an applicant applies for an "industry exemption" from compliance with the restrictions of section 41-27.2, Revised Ordinances of Honolulu, the applicant shall provide sufficient evidence that compliance with section 41-27.2, Revised Ordinances of Honolulu, would cause hardship to the food service industry.

(h) Where an applicant applies for an exemption from compliance with section 41-27.4, Revised Ordinances of Honolulu, the applicant shall provide sufficient evidence that there are no reasonable alternatives available to the business to comply, or compliance with the prohibition would cause significant hardship for the business.

(i) Copies of all exemptions from compliance with sections 41-27.2 or 41-27.4, Revised Ordinances of Honolulu, issued to applicant shall be submitted with the application for exemption.

(j) The Department may request additional information to fully evaluate the applicant's request for exemption. Information requested by the Department shall be submitted within fourteen (14) days from the date of the written request. Information not submitted in a timely manner shall not be considered. [Eff and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 41-27.7) (Imp: HRS §91-2; ROH §§41-27.3, 41-27.4, 41-27.7)

§13-1-50 Decision on application. (a) The Department shall act to approve or deny the application within sixty (60) days of receipt. The Department's decision on the application shall be in writing.

(b) A decision approving an exemption shall be effective upon a specific date determined by the Department and shall

include the term of the exemption, which shall not exceed two (2) years.

(c) A decision approving an industry exemption shall apply to all food vendors identified in the industry applicant's application.

(d) A decision denying an application shall state the reasons the exemption is not granted. [Eff FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 41-27.7) (Imp: HRS §91-2; ROH §§41-27.3, 41-27.4, 41-27.7)

§13-1-51 Withdrawal of request. An applicant may file notice of withdrawal of its application at any time. The Department shall provide written confirmation of receipt of the notice of withdrawal. [Eff and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 41-27.7) (Imp: HRS §91-2; ROH §§41-27.3, 41-27.4, 41-27.7).

§13-1-52 Application to renew exemption. (a) Applicants may apply to renew an exemption. Applications to renew exemptions shall be filed at least sixty (60) days prior to the expiration of the existing exemption, but no earlier than one hundred twenty (120) days prior to the expiration of the existing exemption.

(b) Applicants requesting to renew an exemption shall use the application form provided by the Director. A request to renew an exemption shall include information to establish that during the term of the exemption, diligent efforts were made by the applicant to become compliant.

(c) The filing of an application to renew an exemption shall not automatically extend the duration of a previously-granted exemption.

(d) Decisions on applications to renew exemptions shall be made in accordance with section 13-1-50 of these rules.

(e) Applications to renew an exemption may be withdrawn in accordance with section 13-1-51 of these rules. [Eff and comp FEB 20 2021] (Auth: HRS §91-2; RCH §§4-105.4, 6-803; ROH §§1-9.1, 41-27.7) (Imp: HRS §91-2; ROH §§41-27.3, 41-27.4, 41-27.7)

DEPARTMENT OF ENVIRONMENTAL SERVICES

Amendments to and compilation of title 13, chapter 1, City and County of Honolulu Administrative Rules, on the Summary Page dated February 4, 2021 were adopted on February 4, 2021, following a public hearing held on January 15, 2021, after public notice was given in the Honolulu Star-Advertiser on December 11, 2020.

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

DEPARTMENT OF ENVIRONMENTAL SERVICE
CITY AND COUNTY OF HONOLULU

WESLEY T. YOKOYAMA, P.E.
Director Designate

APPROVED AS TO FORM
AND LEGALITY

Deputy Corporation Counsel

RICK BLANGIARDI
Mayor
City and County of Honolulu

Dated: 2-9-2021

Received this 10th day
of February, 2021.

City Clerk
GLEN I. TAKAHASHI