

CHAPTER 14

GENERAL WELFARE

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* **Editor's Note:** For present provisions, see chapter 26, article 2, Hawai'i County Code.

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* **Editor's Note:** Article 16 was invalidated by *Ruggles v. Yagong*, 353 P.3d 953 (Haw. 2015), *cert. denied*, 577 U.S. --- (2015).

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* **Editor's Note:** Application of article 18 preempted with respect to requirements of 1998 Stipulated Order, providing that State will commence aerial shooting of ungulates sighted in critical habitat area for Palila. *Palila v. Haw. Dep't of Land & Natural Res.*, No. 78-00030 JMS (D. Haw. April 8, 2013) (Order Granting Defs. Mot. for Declaratory and Injunctive Relief).

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* **Editor's Note:** Article 22 was invalidated by *Haw. Papaya Indus. Ass'n. v. County of Haw.*, No. 14-17538 (9th Cir. 2016) (mem.).

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CHAPTER 14**GENERAL WELFARE****Article 1. Alcoholic Beverages.****Section 14-1. Intoxicating liquors prohibited in certain public places.**

- (a) No person shall drink, offer to drink, or display in public view in the following public areas or buildings located thereon, any intoxicating liquors, whether in a bottle, jug, container or otherwise:
- (1) Public highways and public rights-of-way, public sidewalks, public breakwaters and public seawalls, except seawalls in parks where drinking is not prohibited;
 - (2) Public parking lots, which for the purposes of this section shall mean the entire area within any County-owned or operated off-street parking lot or facility, including but not limited to parking and loading stalls, designated parking areas within County parks, landscaping strips, stairwells and pedestrian passageways, internal roadways, and roadways for ingress to and egress from such parking lot or facility;
 - (3) Public school grounds and buildings;
 - (4) Public areas or buildings contiguous to all public school grounds and buildings, except as provided herein;
 - (5) Public parks, except parks enumerated in section 14-2, on which children's playground equipment, such as slides, jungle gyms, seesaws and swings are located;
 - (6) That certain portion of parcel 24 consisting of some twenty-seven thousand ninety-nine square feet, more or less, being a portion of the property designated upon the tax maps of the Third Taxation Division as Tax Map Key No. (3)1-5-2-24, and located in Pāhoa, District of Puna, County and State of Hawai'i;
 - (7) South Hilo:
 - (A) Ainaola Park;
 - (B) Clem Akina Park;
 - (C) Ahualani Park;
 - (D) All public areas, except Coconut Island, located on the Waiākea Peninsula, makai of Kamehameha Avenue-Kalaniana'ole Avenue from the Wailoa River estuary to the site of the former Reeds Bay Restaurant (TMK Nos. 2-1-06:11, 12, 19, and 20);
 - (E) Drag Strip, Hilo;
 - (F) Kalākaua Park;
 - (G) Kaūmana Caves;
 - (H) Keikiland;
 - (I) Lanakila Center;
 - (J) Lincoln Park;

- (K) Lōkahi Park;
- (L) Mo'ōheau Park;
- (M) Pana'ewa Park;
- (N) Honoli'i Beach Park;
- (O) Richardson Park and Center;
- (P) Skeet and Trap Range;
- (Q) Waiākea Recreation Center;
- (R) Waiākea-Waena Playground;
- (S) Waiolama Canal Archery/Jogging Area;
- (T) Zoo, Pana'ewa Rainforest;
- (U) All cemeteries;
- (V) All swimming pools;
- (W) All tennis courts (except Edith Kanakaole);
- (X) Bakers Beach;
- (Y) Hualani Park;
- (Z) Mohouli Park;
- (AA) Wai'olena and Wai'uli Beach Parks, portion located between the pavilions and the west end of the seawall beginning at a point four-tenths of a mile west of Leleiwi Street and extending three hundred twelve feet in the westerly direction;
- (AB) James Kealoha Beach Park.
- (8) North/South Kona:
 - (A) Kailua Playground;
 - (B) Ku'emanu Heiau;
 - (C) Kailua Park, except as provided in section 14-2(a)(2)(F);
 - (D) All swimming pools;
 - (E) All tennis courts;
 - (F) Higashihara Park;
 - (G) Hillcrest Park;
 - (H) Kona Scenic Park;
 - (I) La'aloa Bay Beach Park.
- (9) Ka'ū:
 - (A) Pāhala School Ground;
 - (B) All swimming pools;
 - (C) All tennis courts.
- (10) Puna:
 - (A) Glenwood Park;
 - (B) Kalapana Playground;
 - (C) All swimming pools;
 - (D) All tennis courts;
 - (E) Kahakai Park.
- (11) North Hilo/Hāmākua:
 - (A) Laupāhoehoe Playground;
 - (B) All swimming pools;
 - (C) All tennis courts;
 - (D) Waipi'o Lookout.

- (12) North/South Kohala:
 - (A) Church Row;
 - (B) All swimming pools;
 - (C) All tennis courts;
 - (D) Waikoloa Highway Park;
 - (E) Spencer Beach Park.

(1982, ord 810, sec 1; am 1983 CC, c 14, art 1, sec 14-1; am 1987, ord 87-70, sec 1; am 1990, ord 90-104, sec 1; am 1993, ord 93-7, sec 1; am 1996, ord 96-54, sec 1; am 2008, ord 08-7, sec 3; am 2010, ord 10-5, sec 1; am 2013, ord 13-77, sec 1; am 2017, ord 17-55, sec 1.)

Section 14-2. Areas requiring permits for intoxicating liquors between the hours of 10:00 a.m. and 10:00 p.m.

- (a) Permits shall allow drinking of intoxicating liquors only between the hours of 10:00 a.m. and 10:00 p.m.
 - (1) South Hilo:
 - (A) Bayfront Beach;
 - (B) Coconut Island;
 - (C) Hilo Armory;
 - (D) Ho'olulu Complex;
 - (E) Pōmaika'i Senior Center;
 - (F) Wainaku Gym;
 - (G) Equestrian Center, Pana'ewa;
 - (H) Hakalau Park;
 - (I) Honomū Park;
 - (J) Carvalho Park;
 - (K) Pepe'ekeo Community Center;
 - (L) University Heights Park.
 - (2) North/South Kona:
 - (A) Hale Hālāwai;
 - (B) Hōnaunau Arena;
 - (C) Imin Center;
 - (D) Yano Hall;
 - (E) Greenwell Park;
 - (F) That area in the terminal at Kailua Park specifically designated by the director of parks and recreation;
 - (G) Old Kona Airport Park picnic pavilions and Events Pavilion excluding the runway and areas surrounding the runway, Pawai Bay, and the park area at the end of the runway;
 - (H) Kahalu'u Beach Park;
 - (I) Magic Sands Beach Park, otherwise known as Disappearing Sands Beach Park or White Sands Beach Park;
 - (J) Pāhoehoe Beach Park.

- (3) Ka'ū:
 - (A) Nā'ālehu Park;
 - (B) Pahala Community Center;
 - (C) Hawaiian Ocean View Park.
- (4) Puna:
 - (A) Pāhoa Neighborhood Facility;
 - (B) Volcano Community Center;
 - (C) Kurtistown Park;
 - (D) Mt. View Park;
 - (E) Shipman Park;
 - (F) Isaac Kepo'okalani Hale Beach Park.
- (5) North Hilo/Hāmākua:
 - (A) Honoka'a Rodeo Arena;
 - (B) Haina Park;
 - (C) Honoka'a Park.
- (6) North/South Kohala:
 - (A) Kamehameha Park;
 - (B) Kohala Senior Center;
 - (C) Waimea Park;
 - (D) Waimea Senior Center.

(1982, ord 810, sec 2; am 1983 CC, c 14, art 1, sec 14-2; am 1987, ord 87-70, sec 1; am 1990, ord 90-122, sec 2; am 2008, ord 08-121, sec 1; am 2009, ord 09-144, sec 2; am 2010, ord 10-6, sec 2; am 2016, ord 16-75, sec 1.)

Section 14-2.1. Intoxicating liquors allowed between the hours of 6:00 p.m. and 10:00 p.m.

- (a) No person shall drink, offer to drink, or display in public view in the following public areas or buildings located thereon, any intoxicating liquors, whether in a bottle, jug, container or otherwise, except between the hours of 6:00 p.m. and 10:00 p.m.
 - (1) South Hilo:
 - (A) Ainako Park;
 - (B) Kaiwiki Park;
 - (C) Kaūmana Park and Playground;
 - (D) Kaūmana Lani Park;
 - (E) Kula'imano Park;
 - (F) Malama Park;
 - (G) Pāpa'ikou Park;
 - (H) Waiākea-Uka Park;
 - (I) Wainaku Playground.
 - (2) North/South Kona:
 - (A) Reserved.
 - (3) Ka'ū:
 - (A) Wai'ōhinu Park.

- (4) Puna:
 - (A) Hawaiian Beaches Park.
 - (5) North Hilo/Hāmākua:
 - (A) Āhualoa Park;
 - (B) Laupāhoehoe Senior Center;
 - (C) Pa‘auilo Park;
 - (D) Pāpa‘aloa Park.
 - (6) North/South Kohala:
 - (A) Waikoloa Village Park.
- (1987, ord 87-70, sec 1; am 2016, ord 16-75, sec 2.)

Section 14-2.2. Intoxicating liquors allowed between the hours of 10:00 a.m. and 10:00 p.m.

- (a) Persons may drink intoxicating liquors in the following public areas or buildings located thereon between the hours of 10:00 a.m. and 10:00 p.m.:
 - (1) South Hilo:
 - (A) Carlsmith Park;
 - (B) Hilo Senior Center;
 - (C) Kolekole Beach Park;
 - (D) Wai‘olena and Wai‘uli Beach Parks, except a portion located between the pavilions and the west end of the seawall beginning at a point four-tenths of a mile west of Leleiwi Street and extending three hundred twelve feet in the westerly direction;
 - (E) Onekahakaha Beach Park.
 - (2) North/South Kona:
 - (A) Hōnaunau Boat Ramp;
 - (B) Ho‘okena Beach Park;
 - (C) Manini Point;
 - (D) Miloli‘i Beach Park;
 - (E) Nāpō‘opo‘o Beach Park;
 - (F) Oneo Park.
 - (3) Ka‘ū:
 - (A) Punalu‘u Beach Park;
 - (B) Whittington Beach Park.
 - (4) Puna:
 - (A) Harry K. Brown Park;
 - (B) Kaimū Beach Park.
 - (5) North Hilo/Hamakua:
 - (A) Kukuihaele Social Hall;
 - (B) Laupāhoehoe Beach Park;
 - (C) Waikaumalo Park.

- (6) North/South Kohala:
 - (A) Kapa‘a Beach Park;
 - (B) Kēōkea Beach Park;
 - (C) Māhukona Beach Park;
 - (D) Māhukona Boat Ramp.

(1987, ord 87-70, sec 1; am 1990, ord 90-104, sec 2; am 1990, ord 90-122, sec 3; am 1996, ord 96-54, sec 2; am 2008, ord 08-7, sec 4; am 2009, ord 09-144, sec 1; am 2010, ord 10-6, sec 1; am 2017, ord 17-55, sec 2.)

Section 14-3. Permit application.

- (a) Only persons twenty-one years of age or older who show satisfactory proof of their age and who comply with the requirements set forth in this section shall be entitled to a permit.
- (b) Any person desiring to obtain a permit, required by section 14-2, shall make application in writing to the chief of police or the chief’s authorized representative. The application shall be signed by the applicant and the person who will be responsible for the conduct of all persons at the gathering or occasion, and shall include:
 - (1) The full name and address of the applicant, if an individual, and, if a firm, association, corporation or club, the full names and addresses of its principal officers.
 - (2) The full name and address of the person who will be responsible for the conduct of all persons at the occasion or gathering. Such person shall be of good moral character. The chief of police or the chief’s authorized representative may, in the chief of police’s or the chief’s authorized representative’s discretion, require proof of good moral character if they have good reason to doubt the moral character of the person. The proof shall be in the form of an affidavit signed by two or more responsible persons stating the duration and nature of their knowledge and acquaintance with the person and that the person is of good moral character.
 - (3) The place for which a permit is desired.
 - (4) The date and time for which a permit is desired. In no event shall the permit extend beyond 10:00 p.m.
 - (5) The nature of the occasion or gathering.
 - (6) The approximate number of persons to be in attendance.

(1983 CC, c 14, art 1, sec 14-3; am 1987, ord 87-70, sec 1; am 1990, ord 90-122, sec 4.)

Section 14-4. Permit conditions.

- (a) Permits shall be subject to all applicable laws and ordinances and to the following conditions which shall be set forth in the permit:
- (1) No person who is intoxicated shall be permitted to be or remain upon the premises.
 - (2) No person shall intentionally destroy, damage or injure any property.
 - (3) No person shall dispose of any refuse, except in receptacles placed on the premises for that purpose.
 - (4) The responsible person shall be present at all times.

(1983 CC, c 14, art 1, sec 14-4.)

Section 14-5. Interpretation of article.

The provisions of this article shall not be construed to permit a person to sell intoxicating liquor by obtaining a special license or otherwise.

(1983 CC, c 14, art 1, sec 14-5.)

Section 14-6. Penalty.

A violation of this article shall constitute a petty misdemeanor. Any person violating any provision of this article shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be punishable by a term of imprisonment of not more than thirty days, a fine not to exceed \$1,000, or both.

(1983 CC, c 14, art 1, sec 14-6; am 2012, ord 12-57, sec 2.)

Article 2. Firearms and Explosives.**Section 14-7. Definitions.**

- (a) As used in this article, unless the context clearly requires otherwise:
- (1) "Agency" means organizations, public and private, whose operations are determined by the chief of police to require the use of one or more of the devices enumerated in section 14-9 to accomplish a proper purpose.
 - (2) "Chief of police" means the chief of police of the County or the chief's authorized subordinate.
 - (3) "Devices" means a shell, cartridge, bomb, gun, or aerosol capable of emitting an obnoxious substance in gas, vapor, liquid, or solid form.
 - (4) "Employee" means all officers, agents, and employees of an agency whether or not such officer, agent, or employee has been issued a permit.
 - (5) "Gun" means revolvers, pistols, rifles, fountain pen guns, riot guns, shot guns, and cannons, portable or fixed, except those regularly manufactured, and used with firearm ammunition.
 - (6) "Obnoxious substance" means a substance enumerated in section 14-8 or its derivative.
 - (7) "Shell, cartridge, or bomb" means a shell, cartridge, or bomb capable of being discharged or exploded by the use of a percussion cap, fuse, electricity, or other means to cause or permit the release or emission of an obnoxious substance.

(1983 CC, c 14, art 2, sec 14-7.)

Section 14-8. Possession and use of obnoxious substance prohibited.

- (a) No person shall use a shell, cartridge, bomb, gun, or other device capable of emitting any liquid, gaseous, or solid substance or any combination thereof, which is injurious to a person or property, or which is nauseous, sickening, irritating or offensive to any of the senses; to injure, molest, discomfort, discommode, or coerce another in the use or control of their person or property or engage in a “crime of violence” as defined in Hawai‘i Revised Statutes Title 37, which involves injury or threat of injury to the person or property of another.
 - (b) No person shall possess, discharge, use, transport, sell, or offer to sell any shell, cartridge, bomb, gun, or other device capable of emitting chloroacetophenone (CN), orthochlorobenzylmalononitrile (CS), or their derivatives in any form.
- (1983 CC, c 14, art 2, sec 14-8; am 1995, ord 95-90, sec 2.)

Section 14-9. Exceptions.

- (a) The chief of police and his subordinates may purchase, possess, discharge, use, and transport shells, cartridges, bombs, guns, and obnoxious substances in carrying out their duties.
 - (b) Notwithstanding the prohibitions prescribed in subsections 14-8(a) and (b), private security officers who are employees of licensed private police or security agencies may purchase, possess, discharge, use, or transport shells, cartridges, bombs, guns, and other devices in carrying out their duties, subject however, to the conditions prescribed in sections 14-11 and 14-12.
 - (c) An employee of a government or private organization who, by necessity of employment, is required to go on private property to carry out a duty, may possess, discharge, use, or transport shells, cartridges, bombs, guns, and other devices subject to the conditions prescribed in section 14-12.
- (1983 CC, c 14, art 2, sec 14-9; am 1995, ord 95-90, sec 2.)

Section 14-10. Permit required for agency.

- (a) Any agency desiring to purchase, possess, discharge, use or transport an obnoxious substance shall first file an application for a permit on forms provided by the chief of police. The application shall include the name of the officer or employee who has been authorized to purchase the obnoxious substance from a vendor.
 - (b) The agency shall submit the name of each employee who is to possess, discharge, use or transport the device together with its application for permit, so that the chief of police may issue separate permits to each of the named employees.
 - (c) Each agency except for government agencies shall pay to the director of finance a sum of \$50 for its permit and a sum of \$5 for each permit issued to its employees.
 - (d) Each agency is authorized to purchase only the device emitting an obnoxious substance listed on its permit. The device shall at all times remain in the exclusive ownership and control of the agency.
- (1983 CC, c 14, art 2, sec 14-10; am 1995, ord 95-90, sec 2.)

Section 14-11. Investigation of agency; issuance of permit.

- (a) The chief of police, upon application by an agency, shall determine that the possession, discharge, use, and transportation of a device is necessary due to the nature of the service or services performed by the agency. The chief of police shall have the sole authority to determine the specific service or services for which there is a necessity for the use of a device. The device shall be used only in connection with the performance of the authorized service or services.
- (b) The chief of police shall issue a permit to the individual employee only upon finding that the employee:
 - (1) Is of good moral character;
 - (2) Is at least eighteen years of age;
 - (3) Has not been convicted in this State or elsewhere of a crime of violence or of the illegal use, possession or sale of narcotics; and
 - (4) Has not been adjudged insane.

The agency shall cooperate in providing all such evidence as to fitness of the employee as may be required by the chief of police in making the foregoing findings. The permit furnished by the chief of police shall be carried on the employee's person whenever the employee is in possession of a device.

- (c) Upon making a determination under subsections (a) and (b) favorable to the requesting agency, the chief of police shall issue to the agency a permit authorizing it to purchase, own, and control the device or devices listed. A copy of the permit shall be retained on file at the police department.

(1983 CC, c 14, art 2, sec 14-11.)

Section 14-12. Conditions; storage and transportation.

- (a) Agencies described in subsections 14-9(b) and (c) shall be subject to the following conditions of purchase, use, storage, possession, transportation, and other requirements in connection with an obnoxious substance.
- (b) All devices emitting obnoxious substances owned by an agency except those enumerated in subsection 14-9(c), which may be secured in a locked compartment in the agency vehicle, shall be stored at a single location which is under the exclusive control of the agency and approved by the chief of police. The issuance and reissuance of the devices shall only be to employees authorized under subsection 14-11(b) according to controls approved by the chief of police. In addition, an accurate record of the issuance and return of all devices as well as the number of devices in the possession of each employee and the number in possession of the agency shall be kept by the agency.
- (c) The possession and transportation of a device by an employee shall be, unless otherwise provided, restricted to:
 - (1) Transportation between the place of storage and the place of performance of the approved service;
 - (2) The location where the services for which the use of the device was approved are being performed; and

- (3) Transportation from one place of performance of an approved service to another, if during the course of the employee's duties the employee is required to provide services at more than one place.
 - (d) The employee shall discharge or use the device only within the scope of and when reasonably necessary to employment.
 - (e) The agency will be liable for the negligent use or misuse of a device under its control whether or not the device is being used by its employee within the scope of employment; provided, the penalty provision of section 14-16 shall not apply to the agency for the unlawful act of its employee unless the act is permitted or induced by the action of the agency.
 - (f) The records and procedures for the possession, use, and transportation of a device shall be subject to inspection by the chief of police from time to time.
- (1983 CC, c 14, art 2, sec 14-12.)

Section 14-13. Vendor's license required; fee.

- (a) Any person vending an obnoxious substance shall first obtain a license from the director of finance.
 - (b) The annual fee for a license under this section shall be \$25, which shall be payable to the director of finance.
- (1983 CC, c 14, art 2, sec 14-13.)

Section 14-14. Vendor's records; deliveries.

- (a) The vendor shall keep an accurate record of the sale of obnoxious substances including monthly inventories showing the quantity and type of device received, inventories showing the quantity of devices on hand, accurate records of the sale of devices including the name of the purchasing agency, date of purchase, type of obnoxious substance sold and the number of each type, and such other records as the chief of police may require.
 - (b) The chief of police shall have access to the vendor's books and records pertaining to the purchase and sale of obnoxious substance at reasonable times during business hours.
 - (c) The sale of obnoxious substance shall be made in case sized units as packaged at the factory and unopened except that the unopened case may be placed in a container provided by the local vendor prior to the sale. Sales of obnoxious substance shall be made only to the authorized representative of the purchasing agency as provided in sections 14-10, 14-11, and 14-12 or in the case of delivery to the agency, the delivery shall be only to the location specified in the agency's permit. Deliveries as provided under this article shall be made only by the personnel of the vendor or the delivery service. No permit shall be required for the personnel of the vendor or delivery service making such deliveries.
- (1983 CC, c 14, art 2, sec 14-14.)

Section 14-15. Renewal of licenses and permits.

A license or permit issued under this article shall be renewed every year before July 2.

(1983 CC, c 14, art 2, sec 14-15.)

Section 14-16. Penalty.

A person who violates any provision of this article shall upon conviction be punished by imprisonment not to exceed one year or by a fine not to exceed \$1,000 or both. Upon conviction, the license or permit issued to the person shall be revoked.

(1983 CC, c 14, art 2, sec 14-16.)

Article 3. Noise Control.**Section 14-17. Definition.**

(a) As used in this article, unless the context clearly requires otherwise:

- (1) "Machine or device for reproducing sound" includes any magnifying sound instrument used in the production or replication of music, spoken words, or other sounds, other sound amplification designed to enlarge the volume of sound produced by any instrument or by the human voice.

(1983 CC, c 14, art 3, sec 14-17; am 1990, ord 90-65, sec 2.)

Section 14-18. Use of sound reproducing devices in public areas.

(a) It shall be a violation of law for any person or persons to play, use, operate, or permit to be played, used, or operated, any radio, tape recorder, cassette player, or other machine or device for reproducing sound, if:

- (1) Such machine or device is located in or on:
 - (A) Any public property, including any public street, highway, building, sidewalk, park, or thoroughfare; or
 - (B) Any motor vehicle on a public street, highway, or public space; and
- (2) The sound generated by such machine or device is audible at a distance of fifty feet from the machine or device producing the sound.

(b) Possession by a person or persons of any of the machines or devices enumerated in subsection (a) shall be prima facie evidence that that person, or those persons, operated the machine or device at the time in question, in violation of this section.

(1983 CC, c 14, art 3, sec 14-18; am 1990, ord 90-65, sec 2.)

Section 14-19. Enforcement.

(a) Powers of arrest or citation. Any police officer shall be authorized to issue a citation for any violation under this article. An arrest under the provisions of this article may only be effected by a police officer, and only in instances where:

- (1) The alleged violator refuses to provide the officer with such person's name and address and any proof thereof as may be reasonably available to the alleged violator.

- (2) When the alleged violator refuses to cease such activity after being issued a citation.
- (b) Citation.
- (1) There shall be provided for use by authorized police officers, a form of citation for use in citing violators of this article which does not mandate physical arrest of such violators. The form and content of such citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other citations used in modern methods of arrest so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawai'i and the County of Hawai'i.
 - (2) In every case when a citation is issued, a copy of the same shall be given to the violator.
 - (3) Every citation shall be consecutively numbered and each carbon copy shall bear the name of its respective original.

(1983 CC, c 14, art 3, sec 14-19; am 1990, ord 90-65, sec 2.)

Section 14-19.1. Permits.

- (a) A permit for a temporary exemption from the provisions of subsection 14-18(a) of this article may be issued by the chief of police to commercial, religious, political, civic, charitable, athletic, and other organizations, or individuals, for activities such as carnivals, parades, fund raisers, fairs, bazaars, public speeches and meetings.
- (b) The chief of police shall prescribe a form of application for such a permit which shall be completed by the applicant and which, when completed, shall state the date, time of day, duration, and nature of the proposed activity, the reason for the proposed activity, the name of the person who shall be in charge of the proposed activity, and such other pertinent information as the chief shall deem necessary.
- (c) In determining whether to grant or deny an application for a permit hereunder, the chief shall consider the information provided in the application together with the impact of the proposed noise on the health, safety and welfare of the residents of and visitors to the surrounding area. If more information is needed in order for the chief to make a determination on the application, the chief may request further information from the applicant by means of a supplemental application.
- (d) The applicant shall submit the completed form to the chief not later than five days prior to the proposed activity; thereafter, the chief shall notify the applicant of the decision to grant or deny the permit within three days of the submission of the completed application and any required supplemental application.
- (e) The permit shall state the date, place, time, duration, and nature of the proposed activity, shall be in the possession of the person in charge of the activity, and shall be produced for inspection upon the request of any law enforcement officer.
- (f) The chief may issue a permit subject to conditions which shall be stated upon the permit; including limitations upon the sound level, duration, or time of day of the activity, or the requirement that breaks be taken in the activity.

- (g) The chief may adopt rules not inconsistent herewith for the implementation of the permit system established in this section. Such rules may include provisions for the granting of a permit when an application is received less than five days prior to the proposed activity.
(1990, ord 90-65, sec 2.)

Section 14-19.2. Exemptions.

The following shall be exempt from the prohibitions set forth in section 14-18:

- (1) Activities of the County of Hawai'i, State of Hawai'i, or the United States;
 - (2) Activities of private persons or entities acting within the permitted uses of a permit issued by the County of Hawai'i, State of Hawai'i, or the United States;
 - (3) Amplifying devices within sight-seeing cars, buses, motor coaches, or other similar vehicles, designed primarily to address passengers within the vehicles; and
 - (4) Amplifying devices on or within ambulances or authorized emergency vehicles.
- (1990, ord 90-65, sec 2.)

Section 14-19.3. Penalty.

- (a) Any person convicted of a violation of the provisions of this article shall be punished by a fine of:
- (1) Up to \$100 for the first offense; or
 - (2) Up to \$500 for the second offense, if such offense is committed within six months of the first offense; or
 - (3) Up to \$1,000, or forfeiture of the sound system or components of the sound system up to \$1,000 in value, or a combination of a fine and forfeiture, up to a total of \$1,000, for conviction of the third or more offense, if such offense is committed within one year of the first offense.
- (b) Any offense occurring after the first year of the first offense, and each successive year thereafter, shall be subject to the provisions of subsection (a) as though it were the first instance of the offense.
(1990, ord 90-65, sec 2.)

Article 4. Prohibition of Smoking in Certain Places.

Section 14-20. Definitions.

- (a) As used in this article, unless the context requires otherwise:
"Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets. "Incidental" means that for the prior calendar year, gross sales of food are less than one-third of gross sales of alcoholic beverages. A "bar" is authorized under a license issued by the department of liquor control.

"Bowling alley" means a building where people go to bowl.

“Building” means any area enclosed by a roof and at least three walls.

“Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

“Commercial building” means a building occupied by two or more commercial tenants.

“Electronic smoking devices” means any electronic product that can be used to simulate smoking in the delivery of nicotine or other substances to the person inhaling from the device, including but not limited to and electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.

“Enclosed or partially enclosed area(s)” means area(s) closed in by a roof or overhang and at least two walls.

“Hotel” means a transient vacation rental, other than a bed and breakfast home containing lodging or dwelling units.

“Multifamily dwelling” means a building containing more than two dwelling units.

“Nightclub” means a bar in which live entertainment is provided and in which facilities for dancing by patrons either by live entertainment or recorded music are provided.

“Open to the public” means areas within any building available for use by or accessible to the general public during the normal course of business conducted therein by either private or public entities.

“Restaurant” means any retail eating establishment where food is served or provided for on-site consumption by seated patrons that is authorized by the State department of health to operate as a food establishment, including any private food service establishment or club in which only members or their guests are permitted. The term “restaurant” includes a bar area within the restaurant and outdoor areas of restaurants.

“Retail tobacco store” means a store which primarily sells tobacco products, electronic smoking devices, and accessories, with an entrance door opening directly to the outside, that derives more than fifty-one percent of its gross revenue from the sale of tobacco products, electronic smoking devices, and other smoking accessories, and in which the sale of other products is merely incidental. “Retail tobacco store” does not include a tobacco department or section of another business with any type of liquor, food, or restaurant license, or a store within or part of an indoor public place or a workplace, such as a shopping mall.

“Smoke” or “smoking” means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form. “Smoking” includes the use of an electronic smoking device.

“Tobacco product” means any product made or derived from tobacco that contains nicotine or other substances, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking devices. “Tobacco product” does not include any product specifically approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product that is being marketed and sold solely for that approved purposes.

(1983 CC, c 14, art 4, sec 14-20; am 1987, ord 87-1, sec 2; am 2003, ord 03-112, sec 2; am 2007, ord 07-4, sec 1; am 2015, ord 15-11, sec 1.)

Section 14-21. Prohibition of smoking in certain places.

- (a) Except as otherwise provided in this article, smoking or the use of electronic smoking devices shall be prohibited in all enclosed places within the County, including but not limited to, the following places:
- (1) Patient rooms, wards, waiting rooms, lobbies, and public hallways of public and private health care facilities, including, but not limited to, hospitals, clinics, and medical and dental offices.
 - (2) Restaurants and bowling alleys. If a restaurant or bowling alley contains an outdoor, open air or partially enclosed seating area where food and beverages are served, smoking is prohibited in this area of the establishment.
 - (3) Any enclosed or partially enclosed area or building owned, leased, operated, or maintained by the County, except for residential dwelling units which shall be regulated herein as multifamily dwellings.
 - (4) Except as provided in section 14-22, all business and not-for-profit establishments, including but not limited to, auditoriums, theaters, halls, museums, libraries, galleries, classrooms, private offices, conference or meeting rooms and all other enclosed facilities. This also includes common areas, including but not limited to, work areas, elevators, hallways, cafeterias, employee lounges, stairs, and restrooms.
 - (5) All enclosed or partially enclosed areas within multifamily dwellings that are open to the common use of all unit owners or residents, including but not limited to, lobbies, elevators, restrooms, hallways, corridors, stairways, waiting areas and recreation areas.
 - (6) All enclosed or partially enclosed areas within commercial buildings not subject to the exclusive use and possession of a tenant and open to the common use of the tenants of the building and their employees and customers, including but not limited to, common entrance areas, restrooms, lobbies, elevators, malls, hallways, corridors, escalators, stairways, and waiting or rest areas within commercial buildings.
 - (7) In the event a building is both a multifamily dwelling and a commercial building, as defined in this article, all common use areas except for private residences.

- (8) All enclosed or partially enclosed areas within hotels that are open to the common use of the public, hotel guests, or hotel employees, including but not limited to, restrooms, lobbies, elevators, hallways, corridors, stairways, waiting areas, recreation areas, banquet halls, banquet rooms, and ballrooms.
 - (9) In the event a building is both a commercial building and a hotel, all common use areas except for hotel rooms rented to guests and designated as smoking rooms.
 - (10) All vehicles owned or leased by the County.
 - (11) Taxicabs.
 - (12) In any motor vehicle, whenever occupied by a person less than eighteen years of age.
 - (13) Private residences, during hours of operation, when used as a licensed child care, adult day care or health care facility, except in residences where the care facility is physically detached from the residence or is separated from the owner's area.
 - (14) Smoking or the use of electronic smoking devices is prohibited within a presumptively reasonable minimum distance of twenty feet from any entrance to, exit from, or any fresh air intake of any enclosed area to insure that tobacco smoke or vapor does not enter the enclosed area through entrances, windows, ventilation systems, or other means.
 - (15) Areas within private residences, during hours of operation, that are used for the care of patients or clients in licensed residential care homes, except in residences where the care facility is physically detached from the residence or is completely separated by a solid wall with no other openings except closable doors or windows, which shall remain closed during hours of operation from the owner's area where clients or patients are not allowed.
 - (16) Bars.
- (b) Smoking or the use of any tobacco products, or the use of electronic smoking devices shall be prohibited at all County parks and recreational facilities listed in section 15-68.1.

(1983 CC, c 14, art 4, sec 14-21; am 1987, ord 87-1, sec 2; am 2003, ord 03-112, sec 2; am 2007, ord 07-4, sec 2; am 2008, ord 08-56, sec 1; am 2010, ord 10-33, sec 1; am 2015, ord 15-11, sec 2.)

Section 14-22. Exceptions.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt:

- (1) Private residences, except as prohibited in sections 14-21(a)(13) and 14-21(a)(15).
- (2) Individual hotel and motel rooms that are rented to guests and are designated as smoking rooms.

- (3) Retail tobacco stores; provided that smoke or vapor from these places shall not infiltrate into areas where smoking is prohibited under this article.

(1983 CC, c 14, art 4, sec 14-22; am 1987, ord 87-1, sec 2; am 2003, ord 03-112, sec 2; am 2015, ord 15-11, sec 3.)

Section 14-23. Posting of signs.

- (a) Clearly legible signs that include the words “Smoking is Prohibited by Law Including E-cigarettes and All Other Electronic Smoking Devices” or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette and a symbol of an electronic smoking device enclosed in a red circle with a red bar across it), or both, shall be clearly and conspicuously posted in every public place and place of employment where smoking or the use of electronic smoking devices is prohibited by this article, by the owner, operator, manager, or other person having control of such place.
- (b) Alternate means of notification may be employed provided the effect thereof is equivalent to the notice given by signs described in subsection (a).
- (c) Every public place and place of employment where smoking or the use of electronic smoking devices is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking or the use of electronic smoking devices is prohibited.
- (d) Any person violating any of the provisions of this section shall be issued a notice of violation and shall comply with the provisions of this section within ten days. Thereafter, the violation shall carry a fine as provided in section 14-24(b) and/or 14-24(c). Each violation cited shall constitute a separate offense.

(1983 CC, c 14, art 4, sec 14-23; am 1987, ord 87-1, sec 2; am 2003, ord 03-112, sec 2; am 2015, ord 15-11, sec 4.)

Section 14-24. Violations and penalties.

- (a) It is unlawful for any person to smoke in a place within the County where smoking is prohibited.
- (b) Any person violating any of the provisions of subsection 14-21(a) shall be fined not less than \$25 and not more than \$50. Any person violating subsection 14-21(b) shall be fined \$100 for each separate offense.
- (c) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by:
- (1) A fine not exceeding \$100 for a first violation;
 - (2) A fine not exceeding \$200 for a second violation within one year of the date of the first violation; and
 - (3) A fine not exceeding \$500 for each additional violation within one year of the date of the preceding violation.

(1983 CC, c 14, art 4, sec 14-24; am 1987, ord 87-1, sec 2; am 2003, ord 03-112, sec 2; am 2007, ord 07-4, sec 3.)

Section 14-24.1. Enforcement and administration.**(a) Summons or citation.**

- (1) There shall be provided for use by an officer or employee of the County duly authorized to issue a summons or citation, or any police officer a form of summons or citation for use in citing violators of this article which does not provide for the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court, shall be printed on a form commensurate with the form of other summons or citations used in modern methods of arrest, and so designed to include all necessary information to make the same valid within the laws and regulations of the State and the County.
 - (2) In every case, when a citation is issued, the original of the same shall be given to the violator, provided that the administrative judge of the district court may prescribe that the violator be given a carbon copy of the citation and provide for the disposition of the original and any other copies.
 - (3) Every citation shall be numbered, and each carbon copy shall bear the same number as its original.
- (b) Enforcement and administration of the provisions of section 14-23 shall be under the jurisdiction of the department of public works of the County, which department shall have the power to formulate any applicable rules and regulations necessary to carry out the provisions of section 14-23.
- (c) Except as provided in section 14-24.1(b), enforcement of this ordinance shall be under the jurisdiction of the County police department.
- (d) In addition to the foregoing, any police officer or other officer or employee of the County duly authorized to issue a summons or citation may eject from the premises any person to whom a citation has been issued and who continues to smoke after the person has been requested by the police officer or other duly authorized officer or employee to stop smoking.

(1987, ord 87-1, sec 2; am 2003, ord 03-112, sec 2.)

Section 14-24.2. Fire code.

Nothing in this article shall be construed as superseding applicable fire code provisions. Where a conflict between the provisions of this article and the fire code arises, the fire code provision will prevail.

(1987, ord 87-1, sec 2; am 2003, ord 03-112, sec 2.)

Article 5. Repealed.*
(Rep 2016, ord 16-107, sec 2.)

* **Editor's Note:** For present provisions, see chapter 26, article 2, Hawai'i County Code.

Article 6. Property Offenses.

Section 14-39. Duty of chief of police; cultivated grounds.

It shall be the duty of the chief of police to protect lawns, gardens, grass plots, and other cultivated grounds belonging to the State and the County within the County, and all lawns, gardens, grass plots, and other cultivated grounds of a public nature within the County, and to place or cause to be placed on these places signs and notices warning persons to keep off these places; provided that this section shall not apply, during the period from February 1 through October 31 of each year, to the Hilo bayfront area, situated makai of the Hawai'i Belt Road, from the intersection of Kamehameha Avenue and Hawai'i Belt Road as delineated in the attached map.*
(1983 CC, c 14, art 6, sec 14-39.)

* **Editor's Note:** No map is attached.

Section 14-40. Trespass prohibited; penalty.

(a) A person who trespasses or walks on or over a lawn, garden, grass plot or other cultivated ground, on which there is a sign or notice to keep off shall be guilty of a misdemeanor. Upon conviction, the person convicted shall be fined not less than \$2.50 nor more than \$25, in the discretion of the judge having jurisdiction of the case.
(1983 CC, c 14, art 6, sec 14-40.)

Section 14-40.1. Property damage prohibited; penalty.

(a) It shall be unlawful for any person maliciously or wilfully to mar, injure, damage, destroy, or deface or aid in marring, injuring, damaging, destroying, or defacing any public building, sign, sidewalk, light pole, wall fixture, playground, structure, facility, or other property of the County without its consent.
(b) Any person violating this provision shall be punished, upon conviction, by a fine not exceeding \$1,000 or by imprisonment not to exceed ninety days, or both. In addition to the penalties provided herein, the County may recover for damages to its property, the measure of which shall be the cost of repairing, replacing, or rebuilding the property injured or destroyed.
(1986, ord 86-99, sec 2.)

Article 7. Radio Interference.

Section 14-41. Scope of article.

This article shall not be held or construed to embrace or cover the regulation of any transmitting, broadcasting or receiving instrument, apparatus or device used or useful

in interstate commerce or the operation of which instrument, apparatus or device is licensed or authorized by or under the provisions of any act of the Congress of the United States.

(1983 CC, c 14, art 7, sec 14-41.)

Section 14-42. Operation of device causing electrical interference prohibited.

- (a) No person shall knowingly or wantonly operate or cause to be operated, any machine, device, apparatus or instrument of any kind whatsoever within the County between the hours of 6:00 a.m. and 12:00 p.m., the operation of which shall cause reasonably preventable electrical interference with radio reception within the County.
- (b) X-ray pictures, examinations or treatments may be made at any time if the machines or apparatus used therefor are properly equipped to avoid all unnecessary or reasonably preventable interference with radio reception and are not negligently operated.

(1983 CC, c 14, art 7, sec 14-42.)

Section 14-43. Penalty.

Any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$100. Each day shall constitute a separate offense during which such violation continues.

(1983 CC, c 14, art 7, sec 14-43.)

Article 8. Nuclear Energy.

Section 14-44. Purpose.

The purpose of this article is to maintain a clean and healthy environment for present and future generations in the County, to protect the health and safety of the residents of the County from radiation exposure resulting from dangers of accidents involving the transportation or storage of nuclear materials or the development of nuclear reactors, and to protect the general health, safety, comfort and welfare of the citizens of the County.

The purpose of article 8 shall not in any way inhibit or prohibit the military from carrying out their duties and responsibilities.

(1983 CC, c 14, art 8, sec 14-44; am 1984, ord 84-39, sec 1.)

Section 14-45. Definitions.

- (a) As used in this article, unless the context clearly requires otherwise:
 - (1) "Person" means any individual, firm, partnership, association, corporation, company, governmental entity or department thereof, or organization of any kind.
 - (2) "Store" means to hold for any period of time.

- (3) “Transport” means the transportation by any mode, including but not limited to rail, highway, waterway or air.
- (4) “Radioactive material or substance” means any material or combination of materials which spontaneously emits ionizing radiation and includes, but is not limited to accelerator-produced isotopes and by-product materials.
- (5) The term “radioactive material or substance” shall include:
 - (A) All materials which enter into or are produced as part of the nuclear fuel cycle, including milled uranium ore, fissile material, and all fission by-products.
 - (B) Any quantity of radioactive material specified as a “large quantity” by the Nuclear Regulatory Commission in 10 CFR, part 71.
 - (C) Any quantity of radioactive waste, including nonradioactive material contaminated with radioactive material, which has been produced as part of the nuclear fuel cycle.
- (6) For the purposes of this article, the term “radioactive material or substance” shall not include:
 - (A) Radiation sources or materials employed in therapeutic radiology, in biomedical research, or in educational endeavors, or medical devices designed for individual application (as for example cardiac pacemakers) or commercial devices, processes, or facilities, as approved by the appropriate regulatory and licensing agencies.

(1983 CC, c 14, art 8, sec 14-45.)

Section 14-46. Transportation of radioactive material, unlawful.

It shall be unlawful for any person to transport radioactive material within or through the County.

(1983 CC, c 14, art 8, sec 14-46.)

Section 14-47. Storage of radioactive material, unlawful.

It shall be unlawful for any person to store radioactive material within the County.

(1983 CC, c 14, art 8, sec 14-47.)

Section 14-48. Nuclear energy facilities, prohibited.

It shall be unlawful for any person to locate or build a nuclear energy facility which utilizes nuclear material for the production of energy within the County.

(1983 CC, c 14, art 8, sec 14-48.)

Section 14-49. Penalty.

Any person violating any provision of this article shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, for each violation.

(1983 CC, c 14, art 8, sec 14-49.)

Article 9. Outdoor Lighting.**Section 14-50. Applicability and scope of article.**

- (a) This article shall apply to the installation of all outdoor lighting fixtures within the County.
 - (b) The provisions of this article, including provisions for the imposition upon any person of the penalties by fine for any violation of this article, shall not be construed to exclude the operation of applicable State statutes or other County ordinances. In the case of conflict with other County ordinances, the stricter ordinance shall apply.
- (1988, ord 88-122, sec 3.)

Section 14-51. Definitions.

- (a) As used in this article, unless the context clearly indicates otherwise:
 - (1) “Outdoor lighting fixture” means any outdoor artificial lighting device, fixture, lamp, or other similar device, permanently installed or portable, which is intended to provide illumination for either visibility or decorative effects. Such device shall include, but not be limited to, search, spot, and flood lighting used for:
 - (A) Buildings and structures;
 - (B) Recreational facilities;
 - (C) Parking lots;
 - (D) Landscape lighting;
 - (E) Business and advertising signs;
 - (F) Roadways;
 - (G) Walkways.
 - (2) “Class I lighting” means all outdoor lighting used for, but not limited to, outdoor sales and eating areas, assembly or repair areas, advertising or business signs, recreational facilities, and other similar applications in which color rendition is important.
 - (3) “Class II lighting” means all outdoor lighting used for, but not limited to, illumination for walkways, roadways, equipment yards, parking lots, outdoor security, and other similar applications in which general illumination of the grounds is the primary concern.
 - (4) “Class III lighting” means any outdoor lighting used for decorative effects. It includes, but is not limited to, waterfall and pond lighting and architectural highlighting for buildings and landscapes.
 - (5) “Building official” means the director of public works or the director’s designated representative.
 - (6) “Individual” means any private individual, governmental entity, tenant, lessee, owner, or any commercial entity including, but not limited to, companies, partnerships, joint ventures, or corporations.

- (7) “Fully shielded” means that the outdoor lighting fixture is constructed so that all of the light emitted by the fixture is projected below the horizontal plane of the lowest point of the fixture.
- (8) “Partially shielded” means that the outdoor lighting fixture is constructed so that at least ninety percent of the light emitted by the fixture is projected below the horizontal plane of the lowest point of the fixture.
- (9) “Blue light content” means the ratio of the amount of energy emitted by the outdoor light fixture between 400 and 500 nm divided by the amount of energy between 400 and 700 nm.
- (10) “Traffic color compliant” means the 1931 CIE x y color coordinates of the outdoor light fixture is outside of any of the traffic signal color boxes as defined by ITE ST-052 500/AGS-PM/1105.

(1988, ord 88-122, sec 3; am 2001, ord 01-108, sec 1; am 2011, ord 11-18, sec 1.)

Section 14-52. General requirements.

- (a) Standard fixture. All class types of outdoor light fixtures shall follow the requirements set forth in Table 14-A.
- (b) Shielding. All outdoor lights shall be shielded pursuant to the requirements set forth in Table 14-A.
- (c) Hours of operation. All outdoor light fixtures shall be subject to the hours of operation as required by Table 14-A.
- (d) Mercury vapor lights prohibited. Mercury vapor lamps shall not be used for any new outdoor lighting installations or for the replacement of any existing installation. All existing mercury vapor outdoor lighting fixtures shall be removed by August 17, 1998.
- (e) Blue light content. The blue light content of the outdoor light fixture shall be pursuant to the requirements set forth in Table 14-A.
- (f) Traffic color compliant. The color of the outdoor light fixture shall be pursuant to the requirements set forth in Table 14-A.

(1988, ord 88-122, sec 3; am 2011, ord 11-18, sec 2.)

Section 14-53. Exemptions.

- (a) Existing light fixtures. All outdoor light fixtures planned and approved by the County or existing and legally installed prior to September 1, 1988, are exempt from the installation and shielding requirements of this article, except that when existing outdoor light fixtures become inoperable, the outdoor light fixtures which replace them shall comply with the requirements of this article.
- (b) Fossil fuel light. All outdoor light fixtures producing light directly by the combustion of fossil fuels, such as kerosene and gasoline, shall be exempt from the requirements of this article.
- (c) Holiday decorative lighting. Low wattage fixtures used for holiday decorations shall be exempt from the requirements of this article.

- (d) Residential incandescent illumination. Private residential incandescent light fixtures which are fully shielded or have a lumen output of less than eight thousand one hundred lumens for each acre of property that is intended to be illuminated shall be exempt from the requirements of this article.
- (e) Business signs. Outdoor advertising signs, if constructed of translucent material, and illuminated totally from within and colored with an opaque background using translucent letters or symbols, shall be exempt from the requirements of this article, except that the hours of operation shall be the same as those for Class I outdoor lighting.
- (f) Searchlights. Searchlights used for advertising purposes shall be exempt from the requirements of this article, except that the operation of such lights is limited to the hours of 6:00 p.m. to 10:00 p.m.
- (g) Emergency lighting. Emergency lighting required for public safety is exempt from the requirements of this article.

(1988, ord 88-122, sec 3.)

Section 14-54. Submission of plans.

- (a) All outdoor lighting fixtures shall be installed in conformance with the provisions of this article and those of the electrical code of the County as applicable and subject to the appropriate permit and inspection requirements thereof. The applicant for any permit required by the County for work involving nonexempt outdoor light fixtures shall submit to the building official proof that the proposed work will comply with the article requirements. The submission shall contain, but not be limited to, the following:
 - (1) The location of the site where the outdoor light fixtures will be installed;
 - (2) Plans indicating the type(s) of outdoor light fixtures to be used and their location on the premises;
 - (3) A description of the outdoor light fixtures including, but not limited to, manufacturer's catalog cuts and drawings.
- (b) The plans and descriptions required by subsection (a) sufficiently complete to enable the building official to readily determine whether compliance with the requirements of this article will be secured. If such plans and descriptions cannot enable this ready determination, by reason of the nature or configuration of the devices or fixtures proposed, the applicant shall be required to submit further proof of compliance. Furthermore, any design, material, or method of installation not specifically forbidden by this article may be used, provided any such alternate has first been approved by the building official. The building official may approve any such proposed alternate provided:
 - (1) It is at least approximately equivalent to the applicable specific requirements of this article; and
 - (2) It is otherwise satisfactory and complies with the intent of this article.

(1988, ord 88-122, sec 3.)

Section 14-55. Tables.

Table 14-A		
Lamp Type	Shielding Requirement	Operation Restrictions
Class I		
Low pressure sodium	Fully shielded	None
Low pressure sodium	Partially shielded	Existing fixtures only. New installations as of October 2010 prohibited
Others above 4,050 lumens	Fully shielded	Off from 11:00 p.m. to sunrise*
Others above 4,050 lumens	Fully shielded	Off from 11:00 p.m. to sunrise*
LED fixtures with less than 2% blue light content	Fully shielded	Off at 11:00 p.m. to sunrise*
Class II		
Low pressure sodium		
90 watts or less	None	Existing fixtures only. New installations as of October 2010 prohibited
greater than 90 watts	Partially shielded	Existing fixtures only. New installations as of October 2010 prohibited
Low pressure sodium	Fully shielded	None
LED fixtures with less than 2% blue light content and traffic color compliant	Fully shielded	None
Others above 4,050 lumens		Prohibited
Others below 4,050 lumens		Prohibited
Class III		
Low pressure sodium	Fully shielded	None
Others above 4,050 lumens		Prohibited
Others below 4,050 lumens	Fully shielded	Off from 11:00 p.m. to sunrise*
Neon	None	Off from 11:00 pm to sunrise*

*These lights may remain on after 11:00 p.m. if bona fide business or recreational activities are taking place.

(1988, ord 88-122, sec 3; am 2011, ord 11-18, sec 3; am 2013, ord 13-60, sec 2.)

Section 14-55.1. Penalty.

Any person violating any provision of this article shall, upon conviction, be punished by a fine not to exceed \$500. Such person shall be deemed guilty of a separate offense for each and every day any violation of this article is committed. Furthermore, payment of such a fine shall not relieve the individual from the responsibility of correcting the violative condition, nor shall it preclude the County from instituting any action for its removal.

(1988, ord 88-122, sec 3.)

Article 10. Exceptional Trees.**Section 14-56. Intent.**

In accordance with section 58-2, Hawai'i Revised Statutes, to safeguard exceptional trees from destruction due to land development, the County desires to enact protective regulations to preserve exceptional trees within the County.

(1984, ord 84-22, sec 1.)

Section 14-57. Definitions.

For purposes of this article, "exceptional trees" means a tree or grove of trees with historic or cultural value, or which by reason of its age, rarity, location, size, aesthetic quality, or endemic status has been designated by the council as worthy of preservation. The term exceptional trees does not apply to trees planted for commercial forestry operations. Exceptional trees may be designated generally by biotaxy or individually by location or class.

(1984, ord 84-22, sec 1.)

Section 14-58. Arborist advisory committee.

There shall be an arborist advisory committee consisting of six members who shall be appointed by the mayor. The committee shall include the following: the planning director, or the director's designee; one member who shall be actively employed in the practice of landscape architecture; and four other members selected on the basis of active participation in programs of community beautification, or research or organization in the ecological sciences, including ethnobotany, or Hawaiiana.

(1984, ord 84-22, sec 1; am 1992, ord 92-12, sec 1.)

Section 14-59. Powers and duties.

The arborist advisory committee shall have the following powers and duties:

- (a) To research, prepare and recommend to the council exceptional trees to be protected by County ordinance or regulation.
- (b) To advise property owners relative to the preservation and enhancement of exceptional trees.
- (c) To recommend to the council appropriate protective ordinance, regulations and procedures.
- (d) To review all actions deemed by the council to endanger exceptional trees.

(1984, ord 84-22, sec 1.)

Section 14-60. Procedures.

- (a) Any interested person may petition the arborist advisory committee to examine a tree for designation as an exceptional tree. Upon completion of the committee's study which shall include notification of the owner or lessee of the property, and a duly held public hearing, the committee shall forward the proposed list of exceptional trees to the council.
- (b) The council shall review the proposed list of exceptional trees; it may affirm, modify, or disaffirm the proposed list of exceptional trees. The list shall be adopted by ordinance.
- (c) The arborist advisory committee shall prepare official maps designating the location of exceptional trees adopted by the council and shall file maps with the planning department, department of public works, building division, and office of the County clerk.

(1984, ord 84-22, sec 1.)

Section 14-61. Consultation with County arborist advisory committee.

Prior to the issuance of any building or grading permit or granting of final subdivision approval, the planning department and department of public works, building division, may request advice from the arborist advisory committee concerning trees within any proposed development to assure that exceptional trees are retained and to prevent the unnecessary destruction of such trees during development or redevelopment of land within the County. The lack of designation as exceptional tree does not diminish the responsibility and authority of the planning department and department of public works, building division, to recommend trees to be incorporated into a development plan.

(1984, ord 84-22, sec 1.)

Section 14-62. Enforcing authority.

The planning department shall be charged with the enforcement of this article and shall have the police power to take appropriate action to ensure compliance with the provisions of this article. The planning department may issue citations for the violation of this article. This article shall not be superseded by any permit issued by any County agency under this code.

(1984, ord 84-22, sec 1.)

Section 14-63. Violation and penalty.

It shall be unlawful for any person, corporation, public agency or other entity to substantially damage, remove or destroy an exceptional tree in the County. Any person, corporation, public agency or other entity who violates this section shall be fined not more than \$1,000 per tree or incident.

(1984, ord 84-22, sec 1; am 2004, ord 04-69, sec 1.)

Section 14-64. Injunctive relief.

Proceedings for injunctive relief in circuit court or other court of competent jurisdiction may be had for threatened violations of the provisions of this article.

(1984, ord 84-22, sec 1.)

Section 14-65. [Former] Repealed.

(1984, ord 84-53, sec 1; am 1989, ord 89-102, sec 1; rep 1991, ord 91-140, sec 2.)

Section 14-65. Designated exceptional trees.

The following trees are designated as “Exceptional Trees of the County of Hawai‘i.”

Tree	Tax Map Key and Location	Owner	Ords
Bo or Peepul Tree <i>Ficus religiosa</i>	2-3-15:1 Old Riverside School	State of Hawai‘i Dept. of Education	91-140
Brazilian Fern Tree <i>Schizolobium parahyba</i>	7-5-1:114 Moeauoa 1, North Kona	Gwendolyn C. Hobbs	06-135
Chinese Weeping Banyan	2-2-28:08 Kilauea Avenue	State of Hawai‘i	99-27
Coconut Trees <i>Cocos nucifera</i>	2-2-4:02 Waiolama Canal, Hilo	State of Hawai‘i	91-140
Divi-Divi <i>Caesalpinia coriaria</i>	2-3-05:1 Kalākaua Park	County of Hawai‘i	91-140
False Kamani <i>Terminalia catappa</i>	2-3-12:09 Haili Street	Haili Church	91-140
Gardenia Remyi	2-3-29:02 Waianuenu Avenue	John & Dorothy Cross	00-121
Gold Tree <i>Cydistax donnell-smithii</i>	2-2-27:01 Forestry Arboretum	State of Hawai‘i	91-140, 00-121
Grove of Mangoes <i>Mangifera indica</i>	1-3-08 Pohoiki Road	County of Hawai‘i	93-8, 06-26
Grove of Mangoes	1-4-3, 4, 5, & 28 Government Beach Road	County of Hawai‘i	02-123
Grove of Monkeypod Trees	2-2-04:35 Kamehameha Avenue & Pauahi Street	County of Hawai‘i	99-27
Grove of Monkeypod Trees	2-2-04:56 Kamehameha Avenue & Pauahi Street	County of Hawai‘i	99-27
Hame <i>Antidesma platyphyllum</i>	4-4-14:01 Kalōpā State Park	State of Hawai‘i	91-140, 00-121
Indian Banyan <i>Ficus benghalensis</i>	2-3-05:1 Kalākaua Park	County of Hawai‘i	91-140
Koa <i>Acacia koa</i>	4-4-14:01 Kalōpā State Park	State of Hawai‘i	91-140
Kōpiko <i>Psychotria hawaiiensis</i>	4-4-14:01 Kalōpā State Park	State of Hawai‘i	91-140, 00-121

Tree	Tax Map Key and Location	Owner	Ords
Kōpiko <i>Psychotria hawaiiensis</i>	4-4-14:01 Kalōpā State Park	State of Hawai'i	91-140, 00-121
Loulu Palm <i>Pritchardia beccariana</i>	2-3-05:1 Kalākaua Park	County of Hawai'i	91-140
Loulu Palm <i>Pritchardia schattaueri</i>	8-9-6:04 South Kona	Farms of Kapua, Ltd.	91-140
Monkeypod <i>Samanea saman</i>	2-1-03:27 Lihikai Street	Suisan Company	91-140
Moreton Bay Fig <i>Ficus macrophylla</i>	7-5-6:12 Portion of Kailua Village, North Kona	Burgess, Inc.	06-136
'Ōhi'a	1-5-1:56 Ka'ōhe Homesteads, Pāhoa	Robert E. O'Neill	03-145
'Ōhi'a Lehua <i>Metrosideros polymorpha</i>	2-3-27:01 Rainbow Falls Park, Hilo	State of Hawai'i	91-140, 00-121
'Ōhi'a Lehua <i>Metrosideros polymorpha</i>	4-4-14:01 Kalōpā State Park	State of Hawai'i	91-140, 00-121
'Ōhi'a Lehua <i>Metrosideros polymorpha</i>	4-4-14:01 Kalōpā State Park	State of Hawai'i	91-140, 00-121
'Ōhi'a Lehua <i>Metrosideros polymorpha</i>	4-4-14:01 Kalōpā State Park	State of Hawai'i	91-140, 00-121
'Ōhi'a Lehua <i>Metrosideros polymorpha</i>	4-4-14:01 Kalōpā State Park	State of Hawai'i	91-140, 00-121
'Ōhi'a Lehua <i>Metrosideros polymorpha</i>	4-4-14:01 Kalōpā State Park	State of Hawai'i	91-140, 00-121
'Ōhi'a Lehua <i>Metrosideros polymorpha</i>	4-4-14:01 Kalōpā State Park	State of Hawai'i	91-140, 00-121
Pili nut <i>Canarium sp.</i>	8-1-9:01 South Kona	George Schattauer	91-140
Pua Kenikeni <i>Fagraea berteriana</i>	3-6-09:31 Laupāhoehoe Police Station	County of Hawai'i	91-140
Surinam Cherry <i>Eugenia uniflora</i>	2-3-14:07 Waiānuenu Avenue	Hilo United Methodist Church	91-140
Terminalia Chebula	2-3-01:2 Kamehameha Avenue	County of Hawai'i	02-123
Valencia Orange (Vancouver) <i>Citrus sinensis</i>	8-1-9:1 Kaawaloa, South Kona	Margaret Schattauer	07-124

(1991, ord 91-140, sec 2; am 1993, ord 93-8, sec 1; am 1999, ord 99-27, sec 1; am 2000, ord 00-121, sec 1; am 2002, ord 02-123, sec 1; am 2003, ord 03-145, sec 1; am 2005, ord 05-158, sec 1; am 2006, ord 06-26, sec 2; ord 06-135, sec 1; ord 06-136, sec 1; am 2007, ord 07-124, sec 1; ord 07-125, sec 1; ord 07-126, sec 1.)

Article 11. Neighborhood Watch Signs.**Section 14-66. Purpose.**

The purpose of this article is to establish a process to request, purchase, construct, and install neighborhood watch signs at approved locations.

(1987, ord 87-118, sec 1; am 2015, ord 15-70, sec 1.)

Section 14-67. Definitions.

As used in this article:

“Area coordinator” means a neighborhood watch member designated as the community’s liaison with the police department.

“Chief of police” means the administrative head of the County police department.

“County highway” means every highway, street, or roadway under the jurisdiction and control of the County of Hawai‘i.

“Neighborhood watch” means a citizen crime prevention program under the County police department.

“Neighborhood watch sign” means a sign constructed and installed at the direction of the police department and pursuant to the provisions of this article.

“Police officer” means the community police officer for the appropriate community, or any police officer designated as such by the chief of police.”

(1987, ord 87-118, sec 1; am 2001, ord 01-108, sec 4; am 2015, ord 15-70, sec 2.)

Section 14-68. Powers and duties.

Pursuant to the provisions of this article, the chief of police is authorized to:

- (1) Approve the size and design of all neighborhood watch signs;
- (2) Approve the construction and installation of neighborhood watch signs on County highways; allow signs to be purchased, constructed, and installed on private roadways open to the public; and remove signs or cause signs to be removed;
- (3) Work with the director of public works or the director’s duly authorized representative to facilitate the construction, installation, removal, or replacement of neighborhood watch signs on County highways;
- (4) Work with area coordinators or duly authorized representatives to facilitate the purchase and installation of neighborhood watch signs on private roads open to the public; and
- (5) Provide to a council member upon request, a listing of all active neighborhood watches by location.

(1987, ord 87-118, sec 1; am 2001, ord 01-108, sec 1; am 2015, ord 15-70, sec 3.)

Section 14-69. Application for approval.

- (a) Any area coordinator wishing to have a neighborhood watch sign placed in the person's neighborhood shall submit an application to the chief of police. The area coordinator shall fill out the current application form provided by the police department.
 - (b) No application for the construction and installation of signs shall be approved by the chief of police unless the neighborhood watch is determined by the chief of police to be in compliance with the policies of the police department.
- (1987, ord 87-118, sec 1; am 2015, ord 15-70, sec 4.)

Section 14-70. Rules.

The chief of police is authorized to adopt rules pursuant to chapter 91, Hawai'i Revised Statutes, as are necessary to implement, administer, and enforce the provisions of this article.

(1987, ord 87-118, sec 1.)

Article 12. Official Bulletin Board.**Section 14-71. Official bulletin board established; purpose.**

There shall be an official bulletin board of the Hawai'i County building for the posting of council and committee agendas and public notices of meetings of the County of Hawai'i. This bulletin board is established in compliance with the provisions of article XIII, Hawai'i County Charter.

(1994, ord 94-43, sec 1; am 2006, ord 06-140, sec 2; am 2009, ord 09-148, sec 2.)

Section 14-72. Official bulletin board location.

The official bulletin board of the Hawai'i County building at 25 Aupuni Street, Hilo, Hawai'i shall be located within the exterior covered walkway of the Hawai'i County building, immediately adjacent to its main entrance and shall be conspicuously displayed and identified by the words "public notices" appearing thereon.

(1994, ord 94-43, sec 1; am 2006, ord 06-140, sec 2; am 2009, ord 09-148, sec 3.)

Section 14-73. Official bulletin board custodian.

Each agency and department of the County of Hawai'i shall be responsible for the posting and removal of their agendas and notices on the official bulletin board.

(1994, ord 94-43, sec 1; am 2006, ord 06-140, sec 2.)

Article 13. Soliciting for Money or Objects of Value.

Section 14-74. Definitions.

As used in this article, unless otherwise specified:

“Aggressive manner” means:

- (1) Approaching or speaking to a person, or following a person before, during or after soliciting if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, or damage to or loss of property or otherwise be intimidated into agreeing to the matter being solicited;
- (2) Following a person after the person has given a negative response to such soliciting;
- (3) Intentionally or knowingly touching or causing physical contact with another person without that person’s consent in the course of soliciting;
- (4) Intentionally or knowingly blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to stop or to take evasive action to avoid physical contact;
- (5) Using violent or threatening gestures toward a person solicited;

“Intentionally” shall be as defined in section 702-206, Hawai‘i Revised Statutes.

“Knowingly” shall be as defined in section 702-206, Hawai‘i Revised Statutes.

“Public place” means a place to which the public or a substantial group of persons has access including, but not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, or playground.

“Soliciting” means to ask, request, plea for, or urge support from another. Soliciting includes, but is not limited to, requests for money or objects of value, signing of petitions, participation in surveys, support for political candidates or other election related matters, and support for religious or other moral beliefs. Soliciting does not include passively standing or sitting, nor does it include performing music, singing, or conducting other street performances.

(1999, ord 99-1, sec 1; am 1999, ord 99-153, sec 4; am 2008, ord 08-21, sec 1; am 2015, ord 15-51, sec 2.)

Section 14-75. Prohibited acts.

No person shall solicit in an aggressive manner in any public place.

(1999, ord 99-1, sec 1; am 1999, ord 99-153, sec 4; am 2008, ord 08-21, sec 1; am 2015, ord 15-51, sec 3.)

Section 14-76. Enforcement.

It shall be the duty of the officers of the police department and such officers as are assigned by the chief of police to enforce the provisions of this article.

(1999, ord 99-1, sec 1; am 1999, ord 99-153, sec 4.)

Section 14-77. Form of summons or citations.

There shall be provided for use by authorized police officers a form of summons or citation for use in citing violators of those traffic laws which do not mandate the physical arrest of such violators.

(1999, ord 99-1, sec 1; am 1999, ord 99-153, sec 4.)

Section 14-78. Penalties.

Any violation of this article shall constitute a petty misdemeanor punishable by imprisonment for not more than thirty days or by a fine not to exceed \$100, or by both.

(1999, ord 99-1, sec 1; am 1999, ord 99-153, sec 4.)

Article 14. Street Addressing And Naming.**Division 1. General Provisions.****Section 14-79. Purpose and applicability.**

- (a) The establishment of a uniform and systematic procedure for the assignment of addresses is vital for the health, safety and welfare of the community to provide an effective means of emergency location through the E911 system; expedite postal, utility service, and commercial delivery services; and reduce confusion for people trying to find a residence or business.
- (b) An address shall be assigned to all buildings, as defined in this article, and units within buildings which will be occupied for work or residence uses.
- (c) All streets shall be named, whether public or private, in accordance with this article.
- (d) No application for a building permit or subdivision shall be approved that does not conform to the requirements in this article.

(2004, ord 04-82, sec 2.)

Section 14-80. Definitions.

- (a) "Address" shall mean that combination of street name, building number, and when necessary, a unit number that is assigned to a parcel, building, or unit within a building, and is unique to it, to indicate its location.
- (b) "Building" shall mean any structure that is designed for human occupation for working or living purposes. Structures which provide accessory uses to a business or residence, such as accessory storage, animal shelters, barns, housing of mechanical or scientific equipment, power generation, greenhouses, or other accessory uses located on the same parcel of land are not required to have an address.
- (c) "Director" means the planning director or designated representative.

- (d) "Private street" shall mean any street which is not under the control or ownership of any governmental agency.
 - (e) "Street" means a vehicular way providing access to three or more lots or units, or with the potential to serve three or more lots or units; a vehicular way that is not a street shall be considered a driveway. The address for a building along a driveway shall use the name of the street which the driveway intersects.
- (2004, ord 04-82, sec 2.)

Section 14-81. Administration.

- (a) The director shall assign street names and building numbers within the County of Hawai'i pursuant to this article.
 - (b) The director shall maintain official maps and databases of street names and addresses in a system that enables efficient searches or listing by property owner, address, and tax map key.
 - (c) The director may grant reasonable exceptions to the requirements in this article upon consultation as appropriate with the director of public works, fire chief, and/or police chief to accommodate existing conditions or unusual street or land use patterns.
 - (d) The director may adopt rules to implement this article.
- (2004, ord 04-82, sec 2.)

Division 2. Address Numbers.

Section 14-82. Procedures for assigning and changing addresses.

- (a) Assignment of new address. The director is authorized to assign an appropriate number to each building upon application for a building permit or upon request by the property owner, lessee, tenant, renter or government agency. If circumstances indicate a reasonable need for consultation and consent by the property owner to any new or change of address application by a nonowner, the director may require such consultation and consent before issuing a new or change of address.
 - (1) For existing buildings without an address, the following information shall be provided to the director when applying for an address:
 - (A) Tax map key number of the property.
 - (B) Name of the property owner, and name of the applicant (if not the owner).
 - (C) Plot plan of the parcel showing all driveways and buildings.
 - (D) The director may request additional information as needed to determine the assignment of the correct number.
 - (2) Prior to the assignment of an address, the street that is to be part of the address shall have an official name. If the street does not have an official name, the applicant shall work with the planning department to name the street in accordance with the procedures and requirements set forth in Street Names, division 3 of the article.

- (3) Provided the street has an official name, within fourteen calendar days of the filing of the application with the director, the director shall assign a building number and notify the applicant in writing of the assigned building number and any special requirements as to posting location, number size or other requirements.
 - (4) For new buildings, the director will assign building numbers as part of the building permit process. If the location of the driveway to the property should change after the issuance of the building permit, the applicant or the applicant's builder must notify the planning department prior to occupancy to determine whether a change in the building number is necessary.
- (b) Changing an address.
- (1) The director may change an address when it is out of sequence, does not conform to the numbering standards established in this article, is confusing, or might delay emergency response. If an address is changed, the director must notify the owner in writing at least thirty days before the effective date.
 - (2) A property owner may apply for an address change for personal reasons by submitting an application for number change and paying a fee of \$50. The director may deny the application if the proposed address does not meet the requirements of this article.
- (2004, ord 04-82, sec 2.)

Section 14-83. Address numbering standards.

- (a) Numbering convention. Building numbers shall consist of whole numbers (no fractions) and shall be assigned based on an equal interval system. Under this system, the address is derived by measuring the distance along a street and dividing that distance by some equal interval to determine the address for a building. The number assigned shall be the numbered interval closest to the driveway or front entrance. The interval unit shall be small enough to provide an address to each potential building permitted in the zoning district. The director shall determine the appropriate interval unit for urban and rural areas.
- (b) Point of origin; odd and even numbering. For numbers assigned after August 14, 2004, numbers shall increase from the point of origin with even numbers on the right-hand side. In determining the point of origin, the director may consider any of the following: the existing pattern of surrounding streets; numbering pattern relative to mauka/makai directions; entrance to a cul-de-sac; and/or numbering pattern relative to east/west or north/south direction of the street.
- (c) Prefixes and suffixes. On parcels with multiple buildings, or in situations approved by the director, the assigned number may be followed by an alphabet letter to distinguish each building or units within a building. The director may add a prefix to any number, such as the tax map key zone.

- (d) Corner lots. The address for corner lots shall be the street where the main driveway intersects or where the main entry faces. If there is no driveway or the structure does not directly face either street, the number should be determined based on the predominate street frontage.
(2004, ord 04-82, sec 2.)

Section 14-84. Display of address numbers.

- (a) Display requirement.
- (1) Each property owner shall post building numbers in accordance with the provisions of this article.
 - (2) During construction of new buildings, assigned address numbers shall be posted temporarily at the driveway location to facilitate inspections and assist emergency responders prior to occupancy.
 - (3) Upon written notice from the director that a posted number is erroneous or changed, the property owner shall remove or erase any wrong building number and shall post the correct building numbers in compliance with this article.
 - (4) All buildings required to be numbered shall be numbered at the expense of the owner.
 - (5) The property owner shall be responsible to maintain all posted numbers such that they are visible and readable at all times.
- (b) Display standards.
- (1) Single-family residences.
 - (A) For parcels with single mailboxes, numbers shall be posted on the mailbox to be visible from either direction. Where the entrance of a residence is more than fifty feet from the street travelway edge or when the residence is not clearly visible from the street, a second set of numbers shall be placed on, above, or at the side of the main entrance to the building.
 - (B) In areas without mailboxes, or when multiple mailboxes are located in one location, numbers shall be placed on a post, fence, wall, or some structure within the property line near the intersection of the driveway and the street so that the number is distinguishable and legible from the street. Where the main entrance of the building is clearly visible and within fifty feet of the street travelway edge, the address may instead be conspicuously placed on, above, or at the side of the main entrance so that the number is distinguishable and legible from the street. Where the entrance of a residence is more than fifty feet from the street travelway edge or when the residence is not clearly visible from the street, a second set of numbers shall be placed on, above, or at the side of the main entrance to the building.

- (C) When owners share a common driveway, a sign not exceeding two square feet in area and showing the range of addresses shall be attached to a permanent structure or post with the top of the sign not exceeding six feet in height, and located within the property line near the intersection of the driveway and the street. Each building along the driveway shall be numbered in accordance with this article.
 - (D) Address numbers for residences shall be Arabic numerals not less than three inches in height and shall be made of a durable and clearly visible material or paint (preferably reflective) in a color distinguishable from its background.
- (2) Duplexes, apartments, townhouses, shopping centers.
- (A) Duplexes, apartments, townhouses, shopping centers, or other similar groupings where only one number is assigned shall display such number at the main driveway from the street.
 - (B) Numbers for individual units or establishments within the complex shall be displayed on, above, or to the side of the main doorway of each unit or establishment.
 - (C) Address numbers, including unit numbers, shall be Arabic numerals not less than three inches in height and shall be made of a durable and clearly visible material or paint (preferably reflective) in a color distinguishable from its background.
- (3) Commercial and industrial buildings.
- (A) For buildings within fifty feet of the street, the number may be displayed over the main entrance to the structure or at the driveway entrance upon a wall, ground, or marquee sign. For buildings located more than fifty feet from the street, the number shall be displayed at the driveway entrance. If there are more than one building on the property, the address shall also be displayed over the main entrance to each building.
 - (B) Address numbers for commercial and industrial buildings shall be Arabic numerals not less than four inches in height and shall be made of a durable and clearly visible material or paint (preferably reflective) in a color distinguishable from its background.
 - (C) To avoid confusion, there shall be no other wording or numbers within two feet of the address number.
- (4) Directories.
- For multiple-address developments, the director may require a directory board with a map to be posted at the driveway entrance and/or main entrance walkway. Directories must clearly show the location of all addresses that can be reached via that driveway or walkway. Directories must be easily seen from the street or sidewalk, as appropriate, but placed so that a vehicle or pedestrian pausing to read them can be out of the street and not block the sidewalk or driveway. Additional interior directories may be required where necessary to locate an address.

- (c) The director shall have final approval authority over any aspect of building numbering reasonably related to the legibility, durability and location of the building numbering, and the building owner shall comply with all lawful orders of the director regarding such matters.
(2004, ord 04-82, sec 2.)

Division 3. Street Names.

Section 14-85. Procedures for naming and renaming streets.

- (a) New streets. Streets to be created by land division, whether public or private, serving or with the potential to serve three or more lots or units shall be named by the subdivider and approved by the director during the review and approval of the subdivision.
- (b) Naming or renaming existing streets. The County council, director, street owner, or property owner along the street may initiate the naming or renaming of an existing street. When naming or renaming is initiated by the street owner or property owner, the petition must be signed by owners representing at least two-thirds of the parcels, dwelling units or businesses located along the affected street or portion of the street. When initiated by the County council, the council may direct the director by resolution. The director will name or rename a street in accordance with the criteria set forth in this article.
- (c) Notification. After a street is named, the director must notify all appropriate public agencies and the property owners along the affected street.
(2004, ord 04-82, sec 2.)

Section 14-86. Street name criteria.

Street names shall meet the following criteria:

- (a) No duplication. To eliminate potential confusion, duplication of street names within the same judicial district or zip code zone shall not be permitted. Streets with the same name but different street type designations shall be considered duplicate street names.
Exception: This provision shall not apply to any street named "Maile" in the Leilani Estates subdivision in Puna.
- (b) Continuity. Streets continuing through an intersection or are segments of a planned alignment shall keep the same name.
- (c) Directionals. The director may add directional indicators, such as north and west, to street name proposals as deemed appropriate.
- (d) Other Criteria. The director may specify other street naming criteria in rules.
(2004, ord 04-82, sec 2; am 2016, ord 16-114, sec 2.)

Section 14-87. Street name signs.

- (a) Requirement. Every intersection must have signs naming all the intersecting streets.
- (b) Standards. The design and installation of street name signs, whether public or private street, must meet the minimum standards of the department of public works.
- (c) Responsibility. For new streets created by land division, the subdivider shall be responsible to provide and install the street name signs prior to final subdivision approval. For existing public streets, the State or County as appropriate shall install and maintain the street name signs. For private streets, the street owner is responsible to install and maintain the street name signs. At the request of the majority of the owners of a private street, and upon receipt of a fee sufficient to cover the cost of materials and labor as determined by the County, the County may fabricate, erect, and thereafter maintain the street name signs.

(2004, ord 04-82, sec 2.)

Division 4. Violations.**Section 14-88. Enforcement of numbering or street name requirements.**

- (a) Notice and order. Whenever there is reason to believe there has been a violation of the requirements of this article, the director shall give notice to the owner to comply and order corrective action within thirty days from the date of notification. Such notice and order shall be sent via certified mail, with return receipt requested, to the owner. The date shown on the return receipt shall be the date from which the thirty-day period shall commence for compliance.
- (b) Appeal. Any person adversely affected by any order issued under this section, may within thirty days after the service of the order, appeal the order to the board of appeals as provided by section 6-9.2, County Charter. An appeal to the board of appeals shall stay the provisions of the director's order pending the final decision of the board of appeals.
- (c) Penalty. If the owner fails to comply within the thirty-day period, the owner will be subject to a fine of \$25, and a further penalty of a like sum for every thirty days thereafter that such person shall neglect or refuse to correct the violation. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, and provided that administrative appeals have been exhausted or the time for filing such appeals has elapsed without appeal, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

(2004, ord 04-82, sec 2; am 2011, ord 11-103, sec 6.)

Section 14-89. Enforcement of street name sign or address tampering or defacement.

- (a) Violation. Except for repair, replacement, or relocation within twenty-four hours, no person may alter, deface, or remove any address number or street sign.
- (b) Criminal prosecution.
 - (1) Any person violating or causing or permitting the violation in the preceding paragraph, shall be guilty of a violation, and upon conviction thereof shall be sentenced as follows:
 - (A) For a first offense, by a fine not exceeding \$500.
 - (B) For a subsequent conviction which occurs within five years of any prior conviction for violation of this chapter, by a fine of not less than \$500 but not exceeding \$1,000.
 - (2) After a conviction for a first violation under this chapter, each further day of violation shall constitute a separate offense if the violation is a continuance of the subject of the first conviction.
 - (3) The imposition of a fine under this section shall be controlled by the provisions of the Hawai'i Penal Code relating to fines, sections 706-641 through 706-645, Hawai'i Revised Statutes.

(2004, ord 04-82, sec 2.)

Article 15. Genetically Engineered (Transgenic) Taro (Kalo) and Coffee.**Section 14-90. Purpose.**

The purpose of this article is to protect the taro (kalo) and coffee industry from genetic engineering and preserve agriculturally-based practices and cultural traditions associated with taro (kalo) and coffee within the County of Hawai'i.

(2008, ord 08-154, sec 1.)

Section 14-91. Definitions.

As used in this article, unless the context clearly requires otherwise:

“Genetic engineering” means a process or technology employed whereby the hereditary apparatus of a living cell is altered, modified, or changed so that the cell can produce more or different chemicals or perform completely new functions.

“Person” includes natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, or corporations or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity, acting either for himself or for any other person, under personal appointment or pursuant to law.

“Recombinant DNA” means the transfer of genes, regulatory sequences, or nucleic acid between hosts by the use of vectors or laboratory manipulations and includes the insertion, excision, duplication, inactivation, or relocation of specific genes, regulatory sequences, or sections of nucleic acid. This term does not apply to a material or an organism developed exclusively through traditional methods of breeding, hybridization, or nondirected mutagenesis.

“Release” means a discharge, emission or liberation of any genetically engineered organisms, or the product of a genetically engineered organism, into the open environment.

(2008, ord 08-154, sec 1.)

Section 14-92. Genetically engineered (transgenic) taro (kalo), unlawful.

It shall be unlawful for any person to test, propagate, cultivate, raise, plant, grow, introduce or release genetically engineered (transgenic) or recombinant DNA taro (kalo).

(2008, ord 08-154, sec 1.)

Section 14-93. Genetically engineered (transgenic) coffee, unlawful.

It shall be unlawful to test, propagate, cultivate, raise, plant, grow, introduce or release genetically engineered (transgenic) or recombinant DNA coffee.

(2008, ord 08-154, sec 1.)

Section 14-94. Penalty.

Any person violating any provision of this article shall be guilty of a violation, and upon conviction thereof, shall be sentenced by a fine not exceeding \$1,000.

(2008, ord 08-154, sec 1.)

Section 14-95. Injunctive relief.

Proceedings for injunctive relief in a court of competent jurisdiction may be heard for potential violations of this article.

(2008, ord 08-154, sec 1.)

Article 16. Lowest Law Enforcement Priority of Cannabis Ordinance.*

* **Editor’s Note:** Article 16 was invalidated by *Ruggles v. Yagong*, 353 P.3d 953 (Haw. 2015), *cert. denied*, 577 U.S. --- (2015).

Section 14-96. Purpose.

The purpose of this article is to:

- (1) Provide law enforcement more time and resources to focus on serious crimes;
- (2) Allow our court systems to run more efficiently;
- (3) Create space in our prisons to hold serious criminals;
- (4) Save taxpayers money and provide more funding for necessities such as education and health care; and
- (5) Reduce the fear of prosecution and the stigma of criminality from non-violent citizens who harmlessly cultivate and/or use cannabis for personal, medicinal, religious, and recreational purposes.

(2008, ord 08-181, sec 2.)

Section 14-97. Findings.

- (a) The Institute of Medicine has found that cannabis (marijuana) has medicinal value and is not a gateway drug.
- (b) According to the U.S. Centers for Disease Control, the use of cannabis (marijuana) directly results in zero deaths per year.
- (c) According to the National Institute of Drug Abuse (NIDA), the marijuana eradication program has not stopped cannabis cultivation in the county, rather the program has only decreased the availability of the plant, which increases its “street” value, resulting in more crime.
- (d) The National Institute of Drug Abuse (NIDA) also reported that a large increase of the use of methamphetamine, crack cocaine, and other hard drugs was related to the marijuana eradication program’s implementation.
- (e) According to public record, the ‘mandatory program review’ for the marijuana eradication program, required by section 3-16 of the County Charter to be performed at least once every four years, has never been performed in the thirty years that the program has existed.
- (f) Law abiding adults are being arrested and imprisoned for nonviolent cannabis offenses, clogging our court dockets, overcrowding our prisons, tying up valuable law enforcement resources and costing taxpayers hundreds of thousands of dollars in Hawai‘i County alone each year.
- (g) The citizens of the Cities of Hailey, Idaho; Denver, Colorado; Seattle, Washington; Columbia, Missouri; Eureka Springs, Arkansas and Santa Barbara, Oakland, Santa Monica and Santa Cruz, in California, and the citizens of Missoula County, Montana, all voted for cannabis (marijuana) to be placed as law enforcement’s lowest priority within the past five years.

(2008, ord 08-181, sec 3.)

Section 14-98. Definitions.

“Adult” means any individual who is twenty one years of age or older.

“Adult personal use” means the use of cannabis on private property by adults. It does not include:

- (1) Distribution or sale of cannabis;
- (2) Distribution, sale, cultivation, or use of cannabis on public property;
- (3) Driving under the influence; or
- (4) The commercial trafficking of cannabis, or the possession of amounts of cannabis in excess of the amounts defined as being appropriate for adult personal use.

“Marijuana”, (as defined in the Hawai‘i Revised Statutes of Chapter 712-1240) means cannabis.

“Cannabis” means all parts of the cannabis plant, whether growing or not; the seeds thereof; the resin extracted from any part of the cannabis plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin.

“Lowest Law Enforcement Priority” means a priority such that all law enforcement activities related to all offenses other than the possession or cultivation of cannabis for adult personal use shall be a higher priority than all law enforcement activities related to the adult personal use of cannabis. The Lowest Law Enforcement Priority regarding possession or cultivation of cannabis shall apply to any single case involving twenty four or fewer cannabis plants at any stage of maturity or the equivalent in dried cannabis, where the cannabis was intended for adult personal use.

The “dried equivalent” of twenty four or fewer cannabis plants shall be presumed to be twenty four or fewer ounces of usable cannabis, excluding stems and other non active parts. A greater amount may also fall under the Lowest Law Enforcement Priority provisions described herein if such amount is shown by competent evidence to be no more than the dried equivalent of twenty four plants.

(2008, ord 08-181, sec 4.)

Section 14-99. Lowest law enforcement priority policy relating to the adult personal use of cannabis.

- (a) The cultivation, possession and use for adult personal use of cannabis shall be the Lowest Law Enforcement Priority for law enforcement agencies in the county.
- (b) The council, the police commissioner, the chief of police and all associated law enforcement staff, deputies, officers and any attorney prosecuting on behalf of the county shall make law enforcement activity relating to cannabis offenses, where the cannabis was intended for adult personal use, their Lowest Law Enforcement Priority. Law enforcement activities relating to cannabis offenses include but are not limited to the prosecution of cannabis offenses involving only the adult personal use of cannabis.
- (c) Neither the chief of police, the police commissioner, nor any attorney prosecuting on behalf of the county, nor any associated law enforcement staff, deputies, nor officers shall seek, accept or renew any formal or informal deputization or commissioning by a federal law enforcement agency for the purpose of investigating, citing, or arresting adults, nor for searching or seizing property from adults for cannabis offenses subject to the Lowest Law Enforcement Priority of cannabis where such activities would be in violation of that policy, nor shall such authorities exercise such powers that may be ancillary to deputization or commissioning for another purpose.
- (d) The council shall not authorize the acceptance or the issuing of any funding that is intended be used to investigate, cite, arrest, prosecute, search or seize property from adults for cannabis offenses in a manner inconsistent with the county’s Lowest Law Enforcement Priority policy.

(2008, ord 08-181, sec 5.)

Section 14-100. County prosecuting attorneys.

To the full extent allowed by the Constitution of the State of Hawai'i, the people, through their county government, request that neither the county prosecuting attorney nor any attorney prosecuting on behalf of the county shall prosecute any violations of the sections of chapter 712-1240 of the Hawai'i Revised Statutes regarding possession or cultivation of cannabis in a manner inconsistent with the Lowest Law Enforcement Priority, as described in section 14-98 and 14-99 of this article; in cases where the amount possessed or grown is less than twenty four plants or the dried equivalent, possession for adult personal use shall be presumed.

(2008, ord 08-181, sec 6.)

Section 14-101. Expenditure of funds for cannabis enforcement.

- (a) Neither the council, nor the police commissioner, nor the chief of police, nor any attorneys prosecuting on behalf of the county, nor any associated law enforcement staff, deputies, or officers shall spend or authorize the expenditure of any public funds for the investigation, arrest, or prosecution of any person, nor for the search or seizure of any property in a manner inconsistent with the Lowest Law Enforcement Priority as defined in section 14-98 and 14-99 of this article.
- (b) The council shall not support the acceptance of any funds for the marijuana eradication program.

(2008, ord 08-181, sec 7.)

Section 14-102. Community oversight.

The council shall ensure the timely implementation of this chapter by working with the chief of police and/or the police commissioner to:

- (1) Provide for procedures to receive grievances from individuals who believe that they were subjected to law enforcement activity contrary to the Lowest Law Enforcement Priority of cannabis, which is described in section 14-98 and 14-99 of this article; and
- (2) Publish a report semi-annually on the implementation of this chapter every first day of June and every first day of December, from this day forward, with the first report being issued June 1, 2009. These reports shall include but not be limited to: the number of all arrests, citations, property seizures, and prosecutions for all cannabis offenses in the county, the number of complaints regarding marijuana eradication over-flights; the breakdown of all cannabis arrests and citations by race, age, specific charge, and classification as infraction, misdemeanor, or felony, the estimated time and money spent by the county on law enforcement and punishment for adult cannabis offenses, and any instances of officers or deputies assisting in state or federal enforcement of adult cannabis offenses. These reports shall be published with the cooperation of the county prosecuting attorney, the chief of police, and all associated law enforcement staff in providing needed data.

(2008, ord 08-181, sec 8.)

Section 14-103. Notification of local, state, and federal officials.

- (a) After the enactment of this article, the county clerk shall send letters on an annual basis (every June 1st of each year) to the mayor of the county, the county of Hawai'i voters' Congressional Delegation, Hawai'i's U.S. senators, the county of Hawai'i voters' representatives in the Hawai'i State Legislature, the Governor of Hawai'i, and the President of the United States. This letter shall state; "The citizens of the County of Hawai'i have passed an initiative to make Cannabis offenses the Lowest Law Enforcement Priority, where the Cannabis is intended for adult personal use, and request that the federal and state branches of government remove criminal penalties for the cultivation, possession and use of Cannabis for adult personal use; the citizens also request that Cannabis policies here within the county of Hawai'i be dealt with from our local law enforcement only." The letters may also state, be it the will of the county council; that according to the three year study performed by the National Institute on Drug Abuse, more people used methamphetamine as a result of the marijuana eradication program; they may also express that methamphetamine is a growing problem in our community and more help would be appreciated in that area, and that the first action that would help in that area would be to end the marijuana eradication program.
- (b) This duty shall be carried out until state and federal laws are changed accordingly. (2008, ord 08-181, sec 9.)

Section 14-104. Statutory and constitutional interpretation.

All provisions in this article shall only be implemented to the full extent that the Constitution of the State of Hawai'i and the Hawai'i Revised Statutes allows, and in the event, and only in the event, that a court of competent jurisdiction determines that any provision in any section of this article may not be directed by voter initiative or by action of the council, then that specific mandatory provision only shall be deemed advisory and expression of the will of the people that the provision shall be implemented into law by whichever government branch or official who has the power to implement it, and that the council shall take all actions within their power to work with those branches of government to express the will of the people and encourage, support, and request the implementation of those provisions. (2008, ord 08-181, sec 10.)

Section 14-105. Severability.

In the event, and only in the event, that a court of competent jurisdiction should find one or more of the sections, or parts of the sections of this article illegal, or any provision of this article or the application thereof to any person or circumstance is held invalid, the remainder of the article and the application of such provisions to other persons or circumstances shall not be affected thereby. (2008, ord 08-181, sec 11.)

Article 17. Regulation of Axis Deer.

Section 14-106. Transporting live axis deer into the County; unlawful.

It is a violation of this article for any person to transport live axis deer into the County.

(2011, ord 11-116, sec 2.)

Section 14-107. Transporting live axis deer within the County; unlawful.

It is a violation of this article for any person to transport live axis deer within the County.

(2011, ord 11-116, sec 2.)

Section 14-108. Harboring axis deer; unlawful.

It is violation of this article for a person to give shelter or refuge to axis deer on private property.

(2011, ord 11-116, sec 2.)

Section 14-109. Exemptions.

The Pana'ewa Rainforest Zoo is exempt from this article.

(2011, ord 11-116, sec 2.)

Section 14-110. Penalty.

Any person who violates this article shall, upon conviction thereof, be guilty of a misdemeanor, and be sentenced to a fine of up to \$2,000, or imprisonment for a period of up to one year, or both.

(2011, ord 11-116, sec 2.)

Article 18. Animal Eradication.*

* **Editor's Note:** Application of article 18 preempted with respect to requirements of 1998 Stipulated Order, providing that State will commence aerial shooting of ungulates sighted in critical habitat area for Palila. *Palila v. Haw. Dep't of Land & Natural Res.*, No. 78-00030 JMS (D. Haw. April 8, 2013) (Order Granting Defs. Mot. for Declaratory and Injunctive Relief).

Section 14-111. Findings and purpose.

- (a) The County of Hawai'i is charged with the ultimate responsibility to protect, preserve, and enhance the health, safety, and welfare of the people of Hawai'i Island. With regard to the bond between the people and the land, the County of Hawai'i hereby finds:
- (1) Animal eradication by aerial shooting is in conflict with the cultural and traditional values of the people of Hawai'i County;
 - (2) Aerial hunting eradication creates unnecessary risk to human life, while also disturbing endangered flora and fauna; and
 - (3) Animal population control measures can be performed in a manner that is harmonious with the culture, values, and principles of the people.
- (b) The purpose of this article is to declare:
- (1) Animal eradication by aerial shooting on Hawai'i Island shall no longer be practiced;

- (2) The State of Hawai'i should conform and comply with the provisions of this article;
- (3) Other methods of animal population control must be used. Any such method to be enacted will take in to account the will of the people, which requires effective communication and a concerted effort to remain linked to the people that take responsibility for the land and its resources; and
- (4) The State of Hawai'i should increase public access to the areas of Hawai'i Island that will allow hunters and gatherers the opportunity to provide subsistence to the families of Hawai'i Island. Valuable food resources should be consumed rather than wasted.

(2012, ord 12-109, sec 2.)

Section 14-112. Aerial eradication of animals; unlawful.

It is a violation of this article for any person to engage in the eradication of any animal for any reason while being transported by helicopter, airplane, or any other similar means.

(2012, ord 12-109, sec 2.)

Article 19. Geothermal Drilling.

Section 14-113. Definitions.

For the purposes of this article, the following words and phrases, unless the context otherwise requires, shall be defined as indicated:

“Residence” means a building or a part thereof permitted and designed for or used for a home.

“One mile” means the measurement made from the well bore, in a straight line, without regard to intervening structures or objects, to the property line of the nearest residence.

(2012, ord 12-151, sec 1.)

Section 14-114. Restrictions.

Geothermal resources exploration drilling and geothermal production drilling operations being conducted one mile or less from a residence, shall be restricted to the operating hours of 7:00 a.m. – 7:00 p.m.

(2012, ord 12-151, sec 1.)

Article 20. Plastic Bag Reduction.

Section 14-115. Purpose.

The purpose of this article is to reduce the use of plastic bags and to encourage the use of environmentally preferable alternatives, such as reusable cloth or paper bags.

(2013, ord 12-1, sec 2.)

Section 14-116. Definitions.

As used in this article:

“Business” means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships and corporations, or any other legal entity, and includes any independent contractors associated with the business.

“Plastic checkout bag” means a carryout bag that is provided by a business to a customer for the purpose of transporting groceries or other retail goods, and that is made from non-compostable or compostable plastic and not specifically designed and manufactured for multiple re-use.

“Reusable bag” means a bag that is specifically designed and manufactured for multiple re-use and is (1) made of cloth or other machine washable fabric or (2) made of paper specifically designed for multiple and long-term use.

(2013, ord 12-1, sec 2.)

Section 14-117. Administration.

The director of the department of environmental management shall administer this article including providing education and enforcement and shall adopt administrative rules including defining permissible bags and establishing penalties pursuant to chapter 91, Hawaii Revised Statutes, by July 16, 2013.

(2013, ord 12-1, sec 2.)

Section 14-118. Plastic checkout bags prohibited.

Businesses shall not provide plastic checkout bags to their customers.

(2013, ord 12-1, sec 2.)

Section 14-119. Exemptions.

(a) Organizations classified under Section 501 (c) of the United States Internal Revenue Code and non-incorporated community booster organizations are exempt from the provisions of this article.

(b) Businesses may make plastic checkout bags available for purchase until January 17, 2014.

(2013, ord 12-1, sec 2.)

Article 21. Hydraulic Fracturing Policy.**Section 14-120. Definitions.**

As used in this article, unless the context requires otherwise:

“Department” means the planning department.

“Director” means the director of the planning department, or the director’s authorized representative(s).

“Drilling operation” means the boring, piercing, or penetration into an underground geologic formation.

“Hydraulic fracturing” means a drilling operation into an underground geologic formation and the injection of fluids, gases, chemicals, sand or any other substance with the intention to cause or enhance fractures in the geologic formation for the purpose of instigating or increasing the porosity or permeability of the geologic formation to initiate or increase the production of a desired commodity from a well. Hydraulic fracturing is also known as “fracking,” “hydro-fracking,” “hydro-fracturing,” “hydro-shearing,” “hydraulic shearing,” “hydro-stimulation,” or “enhanced geothermal drilling.” (2013, ord 13-115, sec 2.)

Section 14-121. Hydraulic fracturing prohibited.

Hydraulic fracturing or the practice by any other name shall be prohibited for any purpose. No permit or exemption to this policy shall be provided by the County. Any permit issued by the County that allows for a drilling operation shall include a written condition prohibiting hydraulic fracturing. (2013, ord 13-115, sec 2.)

Section 14-122. Right of entry.

Upon presentation of proper credentials, the director may enter at reasonable times any property in the County which utilizes drilling operations to inspect the property for potential violations of this article, provided that such entry shall be made in such a manner as to cause the least possible inconvenience to the person in possession. An order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted. (2013, ord 13-115, sec 2.)

Section 14-123. Violation.

Any hydraulic fracturing for any purpose at any time using any method constitutes a violation of this article. Single or multiple violations shall be listed on the notice of violation and penalties shall be applied for each violation. (2013, ord 13-115, sec 2.)

Section 14-124. Notice of violation.

- (a) Whenever the director determines that there exists a violation of any provision of this article, the director shall serve a notice of violation upon the parties responsible for the violation, which may include, but shall not be limited to the owner and any lessee of the property where the violation is located, to make the location where the violation is occurring compliant with this article. Such notice of violation shall include:
- (1) The date of the notice;
 - (2) The name and address of the person noticed, and the location of the violation;
 - (3) The section number of the ordinance, code, or rule which has been violated;
 - (4) The nature of the violation; and
 - (5) The deadline for compliance with the notice.

- (b) Proper service of such notice shall be by personal service, registered mail, or certified mail upon the owner of record, provided, that if such notice is by registered mail or certified mail, the designated period within which the owner or person in charge is required to comply with the order of the director shall begin as of the date the owner or person in charge receives such notice.

(2013, ord 13-115, sec 2.)

Section 14-125. Administrative enforcement.

- (a) If the director of planning determines that any entity is not complying with a notice of violation, the director may have the party responsible for the violation served, by mail or delivery, with an order pursuant to this section.
- (b) Contents of the Order.
 - (1) The order may require the parties responsible for the violation, including but not limited to the owner/lessee of the property where the violation is located, to do any or all of the following:
 - (A) Correct the violation(s) within the time specified in the order;
 - (B) Pay a civil fine in the amount, at the place, and before the date specified in the order.
 - (2) The order shall advise the party responsible for the violation that the order shall become final thirty calendar days after the date of its delivery. The order shall also advise that the County's action may be appealed to the board of appeals.
- (c) Civil fines.
 - (1) Any person who violates this article shall pay a civil fine not to exceed \$25,000 for each separate offense. Each day a violation persists shall constitute a separate offense. Any action taken in court to impose or collect the fine provided for in this section shall be considered a civil action.
 - (2) Any person who denies, obstructs, or hampers the director from the entrance to or inspection of any building, place, or vehicle pursuant to this article shall pay a civil fine not to exceed \$10,000 for each day of denial, obstruction, or hampering. Any action taken in court to impose or collect the penalty provided for in this section shall be considered a civil action.
 - (3) Factors to be considered by the director in imposing a civil fine shall include but not be limited to the following:
 - (A) The nature, circumstances, extent, gravity, and history of the violation and of any prior violations;
 - (B) The economic benefit to the violator, or anticipated by the violator, resulting from the violation;
 - (C) The opportunity, difficulty, and history of corrective action;
 - (D) Good faith efforts to comply;
 - (E) Degree of culpability; and/or
 - (F) Such other matters as justice may require.

- (d) **Effect of Order; Right to Appeal.** The provisions of the order issued by the County under this section shall become final thirty calendar days after the date of the delivery of the order. The party responsible for the violation may appeal the order to the board of appeals as provided in chapter 91 of the Hawai'i Revised Statutes. The appeal must be received in writing on or before the date the order becomes final. However, an appeal to the board of appeals shall not stay any provision of the order.
- (e) **Judicial Enforcement of Order.** The County may institute a civil action in any court of competent jurisdiction for the enforcement of any final order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by such final order, the County need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been paid.
- (f) From the date the order takes effect, the date on which an appeal has been rendered against the appellant, or the date on which the judicial enforcement of order has been rendered, whichever shall have standing, the violator shall make immediate remediation. If remediation is not initiated within five calendar days or completed within fifteen calendar days, the County may initiate or complete such remediation, including but not limited to: brownfield cleanup; bioremediation; soil remediation; ground or surface water restoration and remediation; environmental restoration; biohazard remediation; hazardous waste remediation; cleaning, removal, and safe disposal of chemicals and toxins at an appropriate disposal facility; monitoring costs; replanting the negatively impacted area with appropriate native or other plants at the discretion of the County, and safe disposal of poisoned flora and fauna by composting or other means to prevent further negative impacts. Best management practices shall be used to compost poisoned flora and fauna. The County shall charge the violator or its bonding agent for the cost of remediation accrued by the County.

(2013, ord 13-115, sec 2.)

Section 14-126. Penal enforcement.

- (a) **General Provisions.** The provisions of this section are in addition to any other applicable remedy or penalty provided by law.
- (b) In case the parties responsible for violating any provisions of this article fail, neglect, or refuse to comply or correct a violation, the County may submit the matter to the proper authority for penal enforcement.
- (c) Any person, firm, or corporation violating any provisions of this article shall, upon conviction, be deemed guilty of a petty misdemeanor and each person so convicted shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this article is committed, continued or permitted; and upon conviction of any such violation, such person shall be punishable by a fine of not more than \$1,000, or by imprisonment for not more than thirty days, or by both fine and imprisonment.

- (d) Any officer or inspector designated by the County, who has been deputized by the chief of police as a special officer for the purpose of enforcing the provisions of this article, pursuant to section 803-6, Hawaii Revised Statutes, may arrest without warrant alleged violators by issuing a summons or citation in accordance with the procedure specified in this section. Nothing in this section shall be construed as barring such authorized personnel from initiating prosecution by warrant or such other judicial process as is permitted by statute or rule of court.
 - (e) Any authorized personnel designated by the County, upon making an arrest for a violation of this article, may take the name and address of the alleged violator and shall issue to the violator in writing a summons or citation hereinafter described, notifying the violator to answer the complaint to be entered against the violator at a place and at a time provided in the summons or citation.
 - (f) There shall be provided for use by authorized personnel a form of summons or citation for use in citing violators of this article which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawaii and County of Hawaii.
 - (g) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving to the violator a copy of the citation and provide for the disposition of the original and any other copies.
 - (h) Every citation shall be consecutively numbered and each copy shall bear the number of its respective original.
- (2013, ord 13-115, sec 2.)

Section 14-127. Injunctive relief.

Proceedings for injunctive relief in a court of competent jurisdiction may be heard for potential violations of this article.
(2013, ord 13-115, sec 2.)

Article 22. Restriction of Genetically Engineered Crops and Plants.*

* **Editor's Note:** Article 22 was invalidated by *Haw. Papaya Indus. Ass'n. v. County of Haw.*, No. 14-17538 (9th Cir. 2016) (mem.).

Section 14-128. Purpose.

The purpose of this article is to protect Hawaii Island's non-genetically modified agricultural crops and plants from genetically modified organism cross pollination and to preserve Hawaii Island's unique and vulnerable ecosystem while promoting the cultural heritage of indigenous agricultural practices. The prohibition of open air cultivation, propagation, development, or testing of genetically engineered crops and plants is intended to prevent the transfer and uncontrolled spread of genetically engineered organisms on to private property, public lands, and waterways.
(2013, ord 13-121, sec 3.)

Section 14-129. Definitions.

As used in this article, unless otherwise specified:

“Genetically engineered” means an organism that has been modified at the molecular or cellular level by means that are not possible under natural conditions or processes. Such means include recombinant DNA and RNA techniques, cell fusion, microencapsulation, macroencapsulation gene deletion and doubling, introducing a foreign gene, and changing the position of genes. Such organisms are sometimes referred to as “genetically modified organisms” or “transgenic organisms.” Genetically engineered or genetically modified crops and plants include crops and plants for human consumption or for any other purpose. Genetic engineering does not include modification that consists exclusively of breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

“Open air” means a location or facility that is not enclosed in a greenhouse or in another completely enclosed structure so as to prevent the uncontrolled spread of genetically engineered organisms.

“Person” includes natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, or corporations or any officer, agent, employee, or any other personal representative thereof, in any capacity, acting either for himself, his heirs, or for any other person under personal appointment pursuant to law.

“Plant pestilence” means a virulent plant disease or infestation that is causing substantial harm to one or more crops or plants.

“Register” or “Registration” means registration by persons engaged in the cultivation, propagation, development, or indoor testing of genetically engineered crops or plants. Registration shall include: the tax map key and the council district of the property or properties; a detailed description of the location on the property where genetically engineered crops or plants are being cultivated, propagated, developed, or tested, which description shall include the size of the location and scope of usage; the name of the owner of the property or properties; the lessee or any other party in control of the genetically engineered plant or crop operation or usage; the type of genetically modified organism or transgenic manipulation used; the produce or products involved; the type, frequency, and customary amount of pesticides, inclusive of herbicides and insecticides, used; a description of any containment procedures employed; and relevant contact information.

(2013, ord 13-121, sec 3.)

Section 14-130. Prohibition.

No person shall knowingly engage in the open air cultivation, propagation, development, or testing of genetically engineered crops or plants.

(2013, ord 13-121, sec 3.)

Section 14-131. Exemptions.

The following persons shall be exempt from the provisions of this article:

- (1) Persons engaged in the open air cultivation, propagation, or development of genetically engineered crops or plants, other than genetically engineered papaya, but only in those specific locations where genetically engineered crops or plants have been customarily open air cultivated, propagated, or developed by that person prior to December 5, 2013, provided that those specific locations or facilities are registered on or before March 5, 2014; and
- (2) Any person engaged in the open air cultivation, propagation, or development of genetically engineered papaya, whether prior or subsequent to December 5, 2013, provided that each location or facility wherein open air cultivation, propagation, or development of genetically engineered papaya occurs or will occur is registered as provided in this article.

Notwithstanding any other provision of law, these exemptions shall not allow for open air testing of genetically engineered organisms of any kind.

(2013, ord 13-121, sec 3.)

Section 14-132. Emergency exemption.

(a) A person who is engaged in the cultivation, propagation, or development of a non-genetically engineered crop or plant that is being harmed by a plant pestilence as defined in this article may apply to the council for an emergency exemption from the provisions of this article to use a genetically engineered remedy. The council may grant an emergency exemption by way of resolution, provided the council makes an affirmative finding that:

- (1) The cited plant pestilence is causing substantial harm to that person's crop or plant;
- (2) There is no other available alternative solution; and
- (3) All available measures will be undertaken to insure that non-genetically engineered crops and plants, as well as neighboring properties and any water sources, will be protected from contamination or any other potentially adverse effects that may be caused by the genetically engineered organism or associated pesticides.

(b) Any exemption granted pursuant to subsection (a) shall include reasonable restrictions and conditions, including, but not limited to, full compliance with the registration requirements of this article and that the exemption shall expire on a certain day occurring within five years from the date of its issuance. Prior to expiration of the exemption, the council may adopt a resolution to extend the exemption for a specified period of time.

(2013, ord 13-121, sec 3.)

Section 14-133. Registration.

- (a) All persons engaged in any form of cultivation, propagation, development, or indoor testing of genetically engineered crops or plants of any kind shall register annually beginning on or before March 5, 2014, and shall pay an annual registration fee of \$100 per location, payable to the director of finance. All contiguous land shall be treated as a single location. The director of the department of research and development, or the director's authorized representative(s), shall administer the registration provision of this section.
- (b) All persons engaged in non-commercial cultivation or propagation of genetically engineered papaya, in any stage or form, shall be exempt from this section. This registration exemption does not exempt persons engaged in research, development, or testing of genetically engineered papaya.
- (c) Pursuant to section 92F-13 of the Hawai'i Revised Statutes, information such as the name of the registrant and the exact location of the genetically engineered crops or plants may be withheld from the public to the extent that disclosure of that detailed information would otherwise frustrate the ability of the County to obtain accurate information.

(2013, ord 13-121, sec 3.)

Section 14-134. Penalties.

Any person who violates any provision of this article shall be guilty of a violation, and upon conviction thereof, shall be sentenced to a fine of up to \$1,000 for each separate violation. The person shall be deemed to be guilty of a separate offense for each and every day a violation of this article is committed, continued, or permitted for each location. To the extent permitted by law, the person found in violation of this article shall also be responsible for all costs of investigation and testing, as well as for court costs, including but not limited to witness fees and witness expenses.

(2013, ord 13-121, sec 3.)

Section 14-135. Declaratory and injunctive relief.

A court of competent jurisdiction may hear proceedings for declaratory relief or injunctive relief, or both, for violations or potential violations of this article. To the extent permitted by law, the person found in violation of this article shall be responsible for all costs of investigation and testing, as well as for court costs, including, but not limited to, attorney's fees, witness fees, and witness expenses.

(2013, ord 13-121, sec 3.)

Section 14-136. Cumulative remedies.

The provisions of this article are cumulative. Nothing in this article shall affect any other remedy or relief that may be available to any adversely affected person or to the County or other governmental entity.

(2013, ord 13-121, sec 3.)

Article 23. Distribution of Tobacco Products.**Section 14-137. Definitions.**

As used in this article:

“Department” means the Hawai‘i police department.

“Distribute” means to give, deliver or sell, or cause or hire any person to give, deliver or sell, or offer to give, deliver or sell.

“Person” includes natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, or corporations or any officer, agent, employee, factor, or any other personal representative thereof, on any capacity, acting either for himself or for any other person, under personal appointment or pursuant to law.

“Proof of age” means a driver’s license, license for identification only, or other generally accepted means of identification with a photograph of the individual affixed thereon that indicates that the individual is twenty one years of age or older or was born before or on June 30, 1996.

“Tobacco product” means any product that contains tobacco and is intended for human consumption or use, including, but not limited to, cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and electronic smoking devices as defined in section 709-908 of the Hawai‘i Revised Statutes. Tobacco product does not include products that have been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and are marketed and sold solely for such an approved purpose.
(2013, ord 13-124, sec 1.)

Section 14-138. Prohibition; verification of age; penalties.

- (a) It is unlawful for any person to distribute a tobacco product to any person under twenty one years of age, with the exception of any person who is eighteen years of age or older before or on June 30, 2014, and at such time could be a lawful recipient of a tobacco product.
- (b) A person who distributes tobacco products shall verify proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that the prospective recipient may be less than twenty seven years of age.
- (c) Any person who violates this section shall be subject to a fine of \$500 for the first offense. Any subsequent offenses shall subject the person to a fine of not less than \$500 nor more than \$2,000.

(2013, ord 13-124, sec 1.)

Section 14-139. Posted signs required.

- (a) From July 1, 2014, through June 30, 2017, every person who sells or displays tobacco products shall post conspicuously and keep so posted at the place of business at each point of sale a sign which states, “The sale of tobacco products to persons born after June 30, 1996 is prohibited,” in letters at least one-half inch high.

- (b) As of July 1, 2017, every person who sells or displays tobacco products shall post conspicuously and keep so posted at the place of business at each point of sale a sign which states, “The sale of tobacco products to persons under twenty-one years of age is prohibited,” in letters at least one-half inch high.
 - (c) Any person failing to post a notice in compliance with this section shall be subject to a fine of \$100 for the first offense, \$250 for the second offense, and \$500 for the third and all subsequent offenses.
- (2013, ord 13-124, sec 1.)

Section 14-140. Enforcement.

The department or its authorized delegates may conduct random, unannounced inspections at locations where tobacco products are distributed to test and ensure compliance with this article, and shall generally enforce the provisions of this article. This article shall not apply to controlled purchases as part of a law enforcement activity or a study authorized by the State department of health under the supervision of law enforcement.

(2013, ord 13-124, sec 1.)

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