

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 4

MANAGEMENT OF HAWAIIAN HOME LANDS

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Historical Note: Chapter 4 of Title 10, Hawaii Administrative Rules, is based substantially upon Parts III and V, Rules and Regulations, Department of Hawaiian Home Lands. [Eff 8/11/72; am 11/14/77; R 7/30/81]

SUBCHAPTER 1
LAND MANAGEMENT

§10-4-1 Lease of lands. The department may lease, license, or otherwise deal with any Hawaiian home lands as may not be immediately needed for the purposes of the act as provided by section 204(2) of the act and chapter 171, HRS, upon such terms and conditions as it may deem fair and reasonable. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-2 General Plan. The department shall develop and maintain a general plan providing for the development and use of land needed for the purposes of the act. The general plan shall be based upon sociological, financial and economic considerations, among others. A public hearing shall be held before a general plan is adopted or amended. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act, all)

§§10-4-3 to 10-4-20 (Reserved).

SUBCHAPTER 2
LICENSES

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§10-4-21 General provisions. (a) Applications for licenses shall be made in writing and shall state the applicant's status, type and location of the land desired, proposed use of the land, the services or facilities to be provided and the term of the license.

(b) The department may negotiate the issuance of a license. The department shall determine such terms and conditions of a license as it deems prudent, reasonable, and proper and in accordance with this chapter and subject to the commission's approval.

(c) Except as provided in subsection (d), the applicant shall pay all costs incurred by the department for the processing of a license application, including but not limited to, costs of advertisement, survey, and appraisal. The applicant shall remit to the department, together with its application, a non-refundable deposit in the sum of \$200. The applicant shall pay upon execution, the balance of the cost incurred by the department for processing the application in excess of the deposit.

(d) All processing costs may be reduced or waived when the department initiates action for license awards, or the department determines that the license benefits native Hawaiians or the department.

(e) The license rental rate shall be established by appraisal whenever prudent management so dictates. The department may:

- (1) Require the licensee to hire an independent appraiser, provided the appraiser is mutually agreed upon by the department and the licensee;
- (2) Enter into contracts for appraisal; or
- (3) Make its own appraisal.

The licensee shall pay the cost of all appraisals, whether hired by the licensee or contracted for by the department. When a member of the department staff does the required appraisal, the applicant shall pay to the department a sum which is reasonably comparable to the current rate for similar appraisals contracted for in the private sector. Where prudent management does not dictate the rental rate be established by appraisal, the department may negotiate the rental rate of a

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license. If the proposed use benefits other than native Hawaiians, the department may grant the license and the annual rental shall be established by appraisal. If the use benefits the department or native Hawaiians, the department may set a nominal rental rate.

(f) If a survey of the requested licensed area is required by the department, the licensee shall have the survey performed at the licensee's own cost. If the department is requested to provide the survey, the licensee shall pay all costs incurred by the department for the survey. The department may require an additional deposit in the amount of the estimated cost for such survey as determined by the department. [Eff 7/30/81; am 2/3/83; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-22 Licenses for easements and public purposes. Licenses as easements for railroads, telephone lines, electric power and light lines, gas mains and the like, and licenses for improvements for public purposes, including but not limited to schools, post offices, parks, beaches, fire stations, and other public facilities may be granted, in perpetuity or a specified term, subject to reverter to the department upon termination or abandonment, on such terms and conditions as may be prudently and reasonably set by the department. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-23 REPEALED. [R 11/17/84]

§10-4-24 Licenses for mercantile establishments.
(a) The department may issue licenses for mercantile establishments, all of which shall be owned by native

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Hawaiians or organizations formed and controlled by native Hawaiians as provided in section 207(c)(1)(B) of the act.

(b) Mercantile licenses offered upon department initiative shall be disposed of in the following manner:

- (1) The department shall give notice, once in each of two successive weeks in a newspaper of general circulation in the State, of its intention to license Hawaiian home lands for mercantile purposes setting forth the minimum conditions thereunder and the use for which the land will be licensed. Any native Hawaiian or organizations formed or controlled by native Hawaiians interested in securing the license shall file an application with the department not later than thirty days after the publication of the notice;
- (2) If there is only one applicant for the license, the department, after notice as provided in paragraph (1), may dispose of the license; and
- (3) If there are two or more applicants for the license, the department shall select the applicant who submits the highest offer contained in a sealed bid deposited with the department.

(c) The rental for the license to be issued shall be determined by the department, based on the flat rate per square foot, or appraisal, or on a percentage of the gross sales receipt of the licensee. Upon a request of a native Hawaiian, the department may negotiate the issuance of a mercantile license subject to the approval of the commission under section 10-4-21(b).

(d) Section 10-4-21(d) shall not apply to this section. Mercantile licensees shall pay all processing costs, including but not limited to advertisement, survey, and appraisal. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

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§10-4-25 Licenses to the United States. (a) The department may grant licenses to the United States for reservations, roads, and other rights-of-way, water storage and distribution facilities.

(b) Licenses issued or granted to the United States shall not restrict the area required by the department in carrying on its duties nor interfere in any way with the department's operation or maintenance activities.

(c) Licenses issued to the United States shall be at rentals as established by appraisal.

(d) The method of rental payment may include, but not be limited to, compensatory services rendered to the department. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-26 Licenses to churches. (a) The department may issue licenses to churches within a homestead district provided:

(1) The aggregate number of churches in the homestead district does not exceed two per cent of the total number of lessees in the district; and

(2) If land is available, a petition of those who wish to establish a church shall include names of at least twenty per cent of the lessees in the homestead district.

(b) Churches existing on Hawaiian home lands before November 14, 1977 shall be exempt from the requirements of subsection (a)(1).

(c) The annual rental for licenses issued under this section shall be one-half of one cent per square foot, or \$200, whichever is greater.

(d) For the purposes of this section, homestead districts are Hawaiian home lands which have been homesteaded within an ahupua'a or lesser subdivision thereof. [Eff 7/3/81; am 2/3/83; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

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§§10-4-27 to 10-4-30 (Reserved).

SUBCHAPTER 3
PARKS

§10-4-31 Parks managed by the department. The department, from time to time, may establish and manage parks on lands not immediately needed for the purposes of the act. The department, in accordance with the rules established in this chapter, shall make all decisions with respect to the operations of these parks. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-32 Parks managed by other organizations on Hawaiian home lands. The department may, from time to time, establish parks on lands not immediately needed for the purposes of the act. The department may license parks for other organizations to manage under such terms and conditions as the commission may deem necessary as provided by sections 204 and 207 of the act and chapter 171, HRS. (a) In cases where parks are licensed to county, state, or federal agencies for management, the applicable rules of the licensee, as limited by the license's terms and conditions, shall be used in the management of these parks; and it shall be the licensee's responsibility and duty to enforce the applicable rules.

(b) In cases where parks are licensed to other organizations, the rules of the licensee, as approved by the commission and as limited by the license's terms and conditions, shall be used in the management of these parks; and it shall be the licensee's responsibility and duty to enforce the applicable rules. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-33 Park advisory councils, established.

There shall be established a park advisory council in each area where the department operates a district office. Each council shall meet at least once a year and shall be administratively attached to the district office in which the council is established. Each council shall consist of five members appointed by the chairman and confirmed by the commission; provided that each member shall be a native Hawaiian, at least eighteen years of age and a resident of the area served by the district office in which the council is established. Each member shall be appointed for a term of two years. Members of each park advisory council shall serve without compensation. The purpose of each park advisory council shall be to advise the department on rules, practices and activities on and affecting parks that are in the area where the park advisory council is established and are under the management of the department as provided in section 10-4-32. [Eff and comp 10/26/98] (Auth: HHCA Act §222) (Imp: HHCA Act §204)

§10-4-34 Use of parks. The following minimum restrictions apply to department parks:

- (1) The use or possession of alcoholic beverages is prohibited;
- (2) Boating vessels or any similar buoyant devices are prohibited where posted;
- (3) The construction of any buildings, facilities, memorials, or other similar structures is strictly prohibited except with written permission from the department;
- (4) Fires may be built only in areas where the fire can be confined to fireplaces or grills. No person shall allow a fire to burn in a manner that surrounding shrubs, grasses, trees, or structures will be damaged. Fires shall not be left unattended. Portable stoves or warming devices may be used in designated camping and picnicking areas unless otherwise prohibited;

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- (5) All geologic, historic, and archaeological features must be left undisturbed;
- (6) Unreasonably loud noises or unreasonably loud amplified music is prohibited. The decibel level standards shall comply with chapter 342F, HRS, state rules, and county ordinances;
- (7) Activities which may cause disturbances are prohibited unless generally allowed within specific areas of the park. A list of examples of prohibited activities, if any, shall be established by the department in consultation with the park advisory council. This list shall be posted within the district office;
- (8) Driving and parking of vehicles is allowed only on defined roads and in designated parking areas. Vehicles illegally parked or left unattended in closed areas may be impounded or towed to a place of storage, with towing and storage fines charged pursuant to Section 290-11, HRS.
- (9) Pets and other animals shall be leashed or otherwise under physical restrictive control at all times, and are not permitted where signs prohibiting animals are posted. Persons responsible for any animal on the premises shall also be responsible for the clean up and proper disposal of animal droppings and for restoration for any damage caused by the animal;
- (10) Except for maintenance authorized by the department, plants are to be left undisturbed. Where permitted by the department, reasonable quantities of plant material such as leaves, flowers, fruits and seeds may be gathered for personal use;
- (11) Skating, skateboarding, and golfing are prohibited unless otherwise posted;
- (12) Soliciting or panhandling is prohibited. The sale of any goods, food, or services are prohibited unless specifically allowed in

writing by the department; such permission will require the appropriate health and other public permits;

- (13) All waste must be placed in trash cans. Trash from large events must be bagged, securely tied, and disposed of appropriately. The department may require that trash from large events be removed from the premises by park users;
- (14) Wildlife and their habitats must be left undisturbed except where hunting and fishing are permitted subject to all applicable federal, state and county laws, rules, and regulations;
- (15) Picnicking. A person may picnic in the parks except in designated campgrounds and in those locations where prohibited; the department shall post appropriate signage. The department may also establish reasonable limitations on the length of time any person may use picnicking facilities; and
- (16) All criminal activities prohibited under federal and state laws or county ordinances are also prohibited on Hawaiian home lands. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-35 Hours of operation. The department shall establish the hours during which the parks will be open. Hours of operation shall be posted in each district office and may vary depending on the location of the park and the season of the year. Anyone using a park during the hours when the park is closed may be considered a trespasser and may be subject to prosecution. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

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§10-4-36 Closure. At the discretion of the department, a park may be closed for renovation, for safety or for security purposes. The department shall post notice of closure at the district office in which the park is located and at the specific park. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-37 Permits. The department shall post permit requirements in the applicable district office. The department shall attach a copy of permit requirements to approved permits. Park use permits are required for:

- (1) Any group with 26 or more park users;
- (2) Exclusive use of any pavilions; or
- (3) Overnight camping.

The department may require security, traffic control, portable toilets, extra trash receptacles, lifeguards, insurance, security deposits or any other items that the department, in its sole discretion, may deem necessary, given the size and complexity of the event for which the permit is issued. The department shall determine the maximum size for any event and the maximum length of stay for overnight camping, and shall post those limits in the district offices. Anyone required to have a permit shall have the appropriate permit and identification at the park at all times and shall, upon request, show those items to law enforcement officers and other authorized representatives. Anyone without a required permit may be considered a trespasser and may be subject to prosecution. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-38 Permit application. An application for a park use permit may be obtained at the appropriate district office, subject to the following minimum

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guidelines and any other additional provisions that the department may deem necessary:

- (1) Permit applications may be filed from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays;
- (2) Permit applicants must be 18 years or older;
- (3) Permit applications must be in writing on a form provided by the department and contain all information required; and
- (4) Permit applications for events or exclusive use of facilities must be received at least fourteen calendar days before the event and no earlier than one calendar year in advance;
- (5) Camping permit applications must be received at least one working day before the requested date and no earlier than ninety days in advance. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-39 Permit Approval. Park use permits shall be approved or denied by the district office supervisor in whose jurisdiction the park is located. Persons who have been denied a permit may make written requests for reconsideration to the chairperson. Permits shall not be transferred. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-40 Permit Denial. Permits may be denied when:

- (1) The premises or park facilities are closed;
- (2) The person applying for the permit has received a permit during the previous ninety days;
- (3) There are inadequate facilities to meet the needs of the applicant for the permit;
- (4) The premises or facilities will be used by persons other than the person applying for the permit; or

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- (5) The person applying for the permit has a prior record of noncompliance with permit conditions or has committed prior violations of this subchapter. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-41 Permit priorities. In general, permits shall be issued on a first-come, first-served basis, with preference given to native Hawaiian beneficiaries and organizations. In no case, however, shall a native Hawaiian be discriminated against because of place of residence. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-42 Fees. The department, in consultation with the park advisory council, may establish fees for the use of park facilities. Special fees may be charged for events that require unusual departmental assistance. Fees charged by the department shall be made known to the park user before a permit is issued. Additionally, deposits may be required of any permit recipient in order to ensure that rules are met and the area is left in a clean and sanitary condition. A notice listing any required fees or deposits shall be posted in the applicable district office. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-43 Penalties. (a) All permittees shall, upon request, show the permit to any law enforcement officer or authorized representative. Anyone using the park without a required permit may be asked to leave. Any such person who refuses to leave may be considered a trespasser and may be subject to prosecution.

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(b) Anyone violating the provisions of this subchapter may be required to repair or pay for any damage to public or private property, may be subject to confiscation of equipment used in the violation, and may be subject to applicable charges under the law. All plants, objects, or artifacts removed illegally from the premises shall be returned to the department. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-44 Commercial and private operations. The following activities are prohibited in department parks:

- (1) Engaging in or soliciting business;
- (2) Displaying, posting or distributing notices or advertisements; and
- (3) Filming, photographing, video and audio recording, or any other media production that involves the use of professional casts, models, setting, or crews, by any person other than legitimate newspaper or television news personnel.

Exceptions to the above may be granted in writing by the chairperson subject to any terms, conditions, and fees deemed by the chairperson to be fair and reasonable. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)