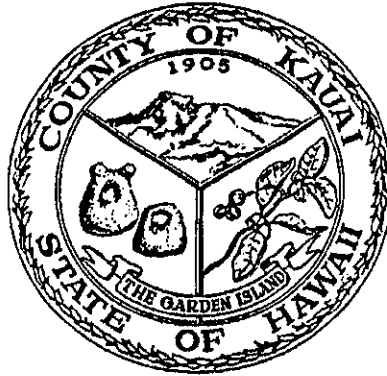


COUNTY OF KAUAI
RULES AND REGULATIONS FOR
REVOCABLE PERMITS TO VEND WITHIN
COUNTY RIGHT-OF-WAYS



Adopted: November 15, 2018.

**RULES AND REGULATIONS FOR REVOCABLE PERMITS TO
VEND WITHIN THE COUNTY RIGHT-OF-WAYS**

I. GENERAL PROVISIONS

A. Purpose. Pursuant to authority conferred by Kaua'i County Code §20-5.7, the purpose of these rules and regulations are to implement the revocable permit process for vending within the County's rights of ways.

B. Scope. These rules shall apply to all rights of way under the jurisdiction of the County of Kaua'i as specified under Kaua'i County Code §18-5.3. These rules shall not be interpreted or applied in a manner that violates any Federal, State, or County laws and regulations.

C. Definitions.

1. "Applicant" includes any individual eighteen years of age or older, organization, partnership, firm, association, trust, estate, private corporation, or other legal entity who has made a formal request or application for a permit to engage in commercial activity within County right-of-ways.
2. "Director of Finance" means the Director of Finance or his or her authorized representative or designee.
3. "Vending" involves the advertising and sale of goods, food, beverages, wares, merchandise, or services to the general public.
4. "Vending area" encompasses the area where any vending and any activities associated with the vending is occurring or planned to occur.
5. "Right-of-way" includes the entire width from property line to property line, including the berm, swale or shoulder of a roadway owned and/or under the jurisdiction of the County of Kaua'i except those roadway areas under the jurisdiction of the Department of Parks and Recreation pursuant to Chapter 23, Article 3 of the Kaua'i County Code.

II. APPLICATION FOR PERMIT AND REVIEW PROCESS

A. General Provisions.

1. All vending engaged within any County right-of-way must have a revocable permit pursuant to Kaua'i County Code Chapter 20, Article 5, unless the commercial activities are authorized or controlled by concession, contract or are part of a County-sponsored program, other than that described herein, or are exempt under Kaua'i County Code §23-3.4, as amended.
 2. Permit applications shall be obtained from the Office of Economic Development (OED) at 4444 Rice Street, Suite 200, Lihue HI 96766.
 3. A complete application and all application requirements stated under subsection II.B. of these Rules shall be submitted to OED a minimum of ninety (90) calendar days prior to any proposed vending event. Applications submitted after the ninety (90) calendar day minimum requirement may not be accepted. Applicants are encouraged to submit permit applications more than ninety (90) days prior to any proposed vending event to accommodate agency review, potential bidding procedures, and public outreach.
 4. The Director of Finance will make every effort to issue a determination on any complete application a minimum of thirty (30) calendar days prior to any proposed vending event.
- B. Application Requirements. The following shall be required to apply for a revocable permit for commercial activities in the County right-of-ways:
1. A non-refundable filing and processing fee in the amount of \$100.
 2. A complete application form that contains all the information required by the Director of Finance, which may include, but is not be limited to:
 - i. Experience in managing events of a similar nature.
 - ii. Ability to provide required insurance.
 - iii. Financial and organizational ability to meet permit conditions.
 - iv. Site plan, schematic diagram of the vendor or stand layout, and map.
 - v. Description of the event.
 - vi. Number of vendors or stands.
 - vii. Promotion of Kaua'i Made and Kaua'i Grown products.
 3. Applicants shall notify adjacent property business owners within a fifty (50) feet radius from the vending area. Property owners within a fifty (50) feet radius from the vending area shall be afforded a minimum of thirty (30) calendar days to provide comments on the application.

For the purposes of this subsection, if there are multiple owners for any given parcel of real property, notice to one (1) co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. At minimum, the notice shall include the following information:

- i. Date(s) and time(s) of the proposed vending activity and event.
- ii. Description of the proposed vending event and the event's location.
- iii. Number of vendors or stands.
- iv. Site plan and map.

4. Along with the application requirements that are specified in this subsection, applicants shall submit to OED the following:
 - i. An affidavit that confirms the mailing or delivery of the notice to the required property owners.
 - ii. A list of persons to which notices were sent.
 - iii. All comments received as a result of the notices.
 - iv. Applicants' responses to any and all comments received.
 - v. Applicants' plans to adjust the permit application based on the comments received.

Should the applicant fail to comply with the notice requirements specified in this subsection, the application shall be automatically denied.

5. The Director of Finance may require evidence that the applicant conducted additional public outreach, which may include community meeting(s); surveys or other means to gauge community support.

C. Bidding. When bidding is required pursuant to Kaua'i County Code Section 20-5.2, the following shall apply:

1. The bidding shall be subject to procedures specified under HRS Chapter 102.
2. Bid Notice shall include all application submittal requirements and evaluation criteria specified under subsection II.B.

D. Criteria for Application Review. The Director of Finance, County Engineer, Fire Department, Police Department, and the Planning Department will consider the following criteria:

1. Compliance with existing Federal, State, and County Laws, including zoning laws.
2. Community support measured by public outreach.

3. Adequate travel ways for cars and pedestrians.
4. For road closures, adequate safety measures, which may include but not be limited to barriers, signage, detours.
5. Maintenance of Americans with Disability Act (ADA) clearances.
6. Reduction/elimination of safety hazards, such as tripping, sight distance, or other obstructions.
7. Adequacy of facilities, including lighting, wastewater, and solid waste.
8. Whether the person or organization applying for the application has any outstanding bills related to previous permits issued for vending under Kaua'i County Code Chapter 20, Article 5.

E. Denial of Permit. An application for a revocable permit for commercial activities in the County right-of-way may be denied for reasons, which may include, but are not limited to:

1. The application is opposed by more than fifty percent (50%) of the property owners that are required to be notified within a fifty (50) feet radius of the vending area.
2. The Director of Finance determines that the proposed permit action is hazardous condition or causes a public nuisance.
3. A state of emergency, natural or civil disturbances, including but not limited to tsunamis, floods, earthquakes, storms, riots, demonstrations, and employee strikes occur or threaten to occur.
4. Permits for the vending of cars or parking of cars for sale or rent in the public right of way shall be denied.
5. There is already an existing and active permit that covers vending on any portion of the proposed vending area and during the date and time of the proposed vending.
6. There are any deficiencies in the permit application pursuant to section II. of these rules.

III. PERMIT CONDITIONS AND RESTRICTIONS

A. Permit Conditions. Any revocable permit for commercial activities in the County right-of-ways will be subject to conditions, which may include, but are not limited to the following:

1. Permits are non-transferable.
2. Persons or organizations to whom permits are issued are bound by the permit conditions stipulated or attached to the permit.
3. Payment of permit fees that shall reasonably reflect the County's cost of administering the revocable permit, or to meet other conditions as the Director of Finance may deem necessary. All costs associated with the conditions shall be borne by the permittee. Any additional direct costs incurred by the County resulting from the activity shall be reimbursed to the County. A draft estimate of the anticipated costs shall be provided to the permittee prior to the proposed vending event.
4. All payments of fees and charges shall be in cash, personal check, cashier's check, certified check, postal money order, or bank money order.
5. The Director of Finance may impose permit conditions as needed to protect the health, safety, and welfare of the public. Such conditions may include, but are not limited to, the following:
 - i. Hiring of security staff.
 - ii. County enforcement staff support.
 - iii. Provision of portable toilets.
 - iv. Provision of portable lighting.
 - v. Traffic control, including barricades and/or signage.
 - vi. Trash cleanup and pickup.
6. Deposit. The Director of Finance reserves the right to require a deposit in an amount not to exceed one thousand dollars (\$1,000.00). Upon the failure to pay any reimbursement or charge as specified under the rules, the County will use the deposit to compensate the County for any charges it is due. The County will return any deposit amount that remains after all reimbursement or charges due to it are deducted, if any. Should the amount of reimbursement or charge due to the County exceed the amount of the deposit, the County reserves the right to institute legal action for collection. In the event such legal action for collection is instituted, the County shall be reimbursed for all costs of any collection action including reasonable attorneys' fees. In addition to the above,

upon the failure to pay any reimbursement or charge as specified under this Agreement, the Party will be banned from applying for a revocable permit until all reimbursement or charges due to the County are fully paid.

7. Compliance with all Laws. The permittee shall comply with all applicable Federal, State, and County laws, ordinances, and rules and regulations, including, but not limited to all rules and regulations of State of Hawai'i Department of Taxation and Department of Health.
8. No Discrimination. The permittee shall conduct its activities and provide its services in a manner that does not discriminate against any person in violation of Federal, State, or County law. In addition, the permittee shall not discriminate against any employee or applicant for employment in violation of Federal, State, or County law.
9. Indemnification. The permittee will defend, indemnify, and hold harmless County from and against any claims and demands for losses or damages (including claims for property damage, personal injury or wrongful death) arising from or growing out of any act, whether willful or negligence, of the permittee or any person claiming by, through or under permittee in connection with the commercial activities, and permittee will reimburse the County for any damages, losses, costs or expenses, including attorneys' fees, incurred in connection therewith. The permittee shall be fully responsible to compensate County or County's licensees for any damages.
10. Loss or Damage. The permittee assumes all risks of loss or damage to the County's property from any cause, and agrees to return the premises to the County in the same or similar condition that existed prior to the event. Should loss or damage to the County's property be determined by the County within forty eight (48) hours of the event, the permittee shall repair, reimburse or replace the equipment to the satisfaction of the County. If reimbursement is required by the County, the permittee shall make such reimbursement within five (5) calendar days from the County's billing. All determinations made by the County are final.
11. Assumption of Risk. The County shall not be liable or responsible to the permittee for any accidents, injuries, or damages occasioned by any means whatsoever, nor from any damage arising from any acts or neglect of any other party caused by the transportation, set-up, and use of dismantling of the County's property. The permittee's use of the County's property shall be at the risk of permittee only, and permittee shall hold

County harmless from any and all claims arising out of loss or damage to the same, including subrogation claims by permittee's insurance carriers.

12. Release. In consideration of accepting and using the County's property for its event, the permittee, its beneficiaries, heirs, executors, administrators, representatives, successors, and assigns, and any person or entity acting for, under, or through them, hereby releases and forever discharges the County, its officials, employees, representatives and agents, from and on account of any and all claims, actions, causes of action, claims for relief, damages, injuries, losses, punitive or treble damages, liens, debts, costs, interest, attorneys' fees, experts' or consultants' fees, expenses, and other relief, whether in law or in equity, whether known or unknown, suspected or unsuspected, fixed or contingent, past, present, and future, whether sounding in tort, contract, statute or otherwise, resulting from, arising out of, or connected with the event, including but not limited to its transportation, set-up, use of and dismantling of its equipment for the event.
13. No Subleasing. A rental fee may not be charged by the permittee for use of public rights-of-way or facilities covered by the permit.
14. Kaua'i Products. Vending of Kaua'i Grown and Kaua'i Made products is strongly encouraged.

IV. **REVOCAION, MODIFICATION, OR TERMINATION OF PERMIT**

A. Revocation or Modification.

1. Notice. The Director of Finance shall provide prompt written notice to the permittee of any action to revoke or modify a permit for the following reasons:
 - i. A permittee violates permit conditions or other provisions of these rules.
 - ii. The circumstances under which the permit was considered have substantially changed as determined by the Director of Finance.
2. Notice Requirements. Written notice of revocation and/or modification, when applicable, shall state the following:
 - i. The date of the Notice of Violation.
 - ii. Permit number, event, location of the event, and the name and address of the person noticed.
 - iii. The nature of the violation.

- iv. Any terms for the revocation or modification, including a description of the items to be done to correct any violation.
- v. The deadline for compliance with the Notice of Violation.
- vi. The penalties that will be imposed if compliance of the Notice of Violation is not met, which may include permit revocation, fine, and liability for any injuries to person or property and to the County resulting from the owner's failure to comply.
- vii. The Notice of Violation may be appealed upon notice within thirty (30) days of service to Director of Finance, and if not appealed, the Notice of Violation shall become final thirty (30) days after the date of service.

3. Automatic Revocation or Modification. Permits may be revoked or modified at any time without prior notice when any of the following occurs:

- i. A state of emergency is declared by the Director or other proper authorities.
- ii. Natural or civil disturbances, including but not limited to, tsunamis, floods, earthquakes, storms, riots, demonstrations and employee strikes occur or threaten to occur.
- iii. Permit fees and costs, as required, are not paid.

B. Non-Use of Permit. Failure to use a permit at the designated time and place shall not result in a refund or credit of fees previously paid, unless otherwise determined by the Director of Finance

V. APPEALS OF PERMIT DECISIONS

A. General Provisions.

- 1. Appeals. The petition for appeal shall be submitted to the Director of Finance and shall be filed within thirty (30) days of service of the Director's decision to approve, deny, revoke, or modify a permit. The petition shall contain the following:
 - i. The name, address and telephone number of the appellant.
 - ii. The identification of the appellant's proposed event and location.
 - iii. All pertinent facts.
 - iv. The action of the Director of Finance.
 - v. The reasons for the appeal, including a statement as to why the appellant believes that the Director's action was in violation of the applicable law, or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or is arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

- vi. Petitions not in conformance with these requirements shall be rejected by the Director of Finance.
2. Standing. Only aggrieved parties have standing to appeal an action under these rules.
 3. Hearing Officer. Upon receipt of the petition for appeal, the Director of Finance shall within a reasonable time thereafter appoint a Hearings Officer who shall not be an employee of the Department of Finance. The Hearings Officer shall afford the petitioner and all other parties an opportunity to be heard. Such hearing shall be conducted in conformity with the applicable provisions established herein for contested case hearings before the Hearings Officer.
 - i. Hearings Officer Action.
 - a. A Hearings Officer appointed by the Director of Finance pursuant to these rules and other applicable law shall render his or her decision within sixty (60) days of the close of the evidentiary portion of the hearing.
 - b. A longer period to render any decision by the Hearings Officer may be permitted by agreement of all parties.
 4. Definitions.
 - i. "Contested Case" means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.
 - ii. "Department" means the Department of Finance or its authorized representative.
 - iii. "Director" means the Director of Finance or his or her authorized representative or designee.
 - iv. "Hearing" refers only to such hearing held by the Hearings Officer immediately prior to a judicial review of a Contested Case as provided in HRS Section 91-14.
 - v. "Hearings Officer" means any person or persons designated and authorized by the Director of Finance to conduct a hearing for the purpose of taking testimony and to report his or her findings of facts and conclusions of laws and decision and order.
 - vi. "HRS" means Hawai'i Revised Statutes.
 - vii. "Party" means a Petitioner or Petitioners and the Department or Director.
 - viii. "Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

- ix. "Petitioner" means a person who seeks to appeal a decision of the Director of Finance issued pursuant to his or her authority under the Kaua'i County Code Chapter 20, Article 5.
- x. "Proceeding" means a matter that is submitted to a Hearings Officer designated and authorized by the Director of Finance to conduct a hearing for the purpose of taking testimony and reporting his or her findings of facts and conclusions of laws and decision and order.

B. General Requirements in Proceedings Before the Hearing Officer.

- 1. Who May Appear Before the Hearing Officer. Any party to a proceeding before the Hearings Officer may appear in his or her own behalf or as an authorized representative of a partnership, corporation, trust or association and an officer or employee of a department or agency of the State or a political subdivision may represent that department or agency in any proceeding before the Hearings Officer. If a party is to be represented by an attorney, that attorney who appears before the Hearings Officer shall be in good standing before the Hawai'i Supreme Court. The Hearings Officer may at any time require any person appearing before him/her, in a representative capacity, to show proof of his or her authority and qualification to act in such capacity.
- 2. Code of Ethics. Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the department, by such act represents that he or she is legally authorized to do so and shall comply with the laws of this State and the County of Kaua'i, and the rules and regulations of the department; and further, he or she shall maintain the respect due to the Hearings Officer and shall never deceive or knowingly present any false statements of fact or law to the Hearings Officer.

C. Requirements of Filing of Documents.

- 1. Time and Place. All pleadings, briefs, submittals, petitions, reports, maps, exceptions, memoranda and other legal papers required to be filed with the Hearings Officer in any proceeding shall be filed with the Hearings Officer at his or her place of business, and shall be served on all parties to the proceeding. Unless otherwise ordered, the date on which the papers are accepted shall be regarded as the date of filing.

2. Format. All submittals shall be clearly and permanently legible and in such form as may be prescribed by the Hearings Officer. The original shall be signed in ink by each party or his or her counsel and show the address of such person.
3. Copies. Unless otherwise required by these rules or the Hearings Officer, there shall be filed with the Hearings Officer, an original and two copies of each submittal thereof. Additional copies shall be promptly provided if the Hearings Officer so requests.
4. Extensions of Time. Whenever a party is required to file a pleading within the period prescribed or allowed by these rules, by notice given there under or by an order or regulation, the Hearings Officer may (1) for good cause before the expiration of the prescribed period, with or without notice to the parties, extend such period, (2) pursuant to a stipulation between all of the parties, extend such period, and/or (3) permit the act to be done after the expiration of the specified period where the failure to act is clearly shown to be the result of excusable neglect. All requests for continuances, except for stipulations, should be by written motion, unless it is made during the course of a hearing.
5. Amended Pleadings. All pleadings may be amended at any time prior to the hearing. Amendments offered prior to the hearing shall be served on all parties and filed with the Hearings Officer. All parties shall have the opportunity to answer and be heard on amendments filed after the hearing commences, and the Hearings Officer shall decide whether such amendments shall be allowed.

D. Service of Process.

1. By Whom Served. The Hearings Officer shall serve copies of all orders, notices and other papers issued by him or her, together with any other papers that are required by law. All other papers shall be served by the parties filing them.
2. Upon Whom Served. All papers served by either the Hearings Officer or any party shall be filed and served upon all parties through their counsel if they have retained counsel and shall contain a certificate of service attesting to such service. Any counsel entering an appearance subsequent to the initiation of such proceeding shall notify all other counsel of record and all parties not represented by counsel of such fact.

3. Service Upon Parties. The final decision and order, and any other paper required to be served by the Hearings Officer upon a party, shall be served upon such party or his/her counsel of record.
4. Method of Service. Service of papers shall be made personally or, unless otherwise provided by law, by mail to the last known address of the party or his/her counsel of record.
5. When Service is Complete. Service upon parties other than the Hearings Officer shall be regarded as complete upon mailing or upon personal service unless otherwise specifically directed by the Hearings Officer.
6. How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the Hearings Officer.
 - i. Service upon the attorney or upon a party shall be made (a) by delivering a copy to the attorney or party; or (b) by mailing it to the attorney or party at the attorney's or party's last known address; or (c) if no address is known, by leaving it with the clerk of the Director; or (d) if service is to be upon the attorney, by email transmission to the attorney's business email address.
 - ii. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.
 - iii. Service by mail is complete upon mailing. Service by email transmission is complete upon receipt of the entire document by the intended recipient and between the hours of 8:00 a.m. and 5:00 p.m. on a week day. Service by email transmission that occurs after 5:00 p.m. shall be deemed to have occurred on the next week day. Email transmission means transmission and receipt of the entire document without error with a cover sheet which states the attorney(s) to whom it is directed, the case name and case number, and the title and number of pages of the document.
 - iv. Service by email transmission shall be confirmed by a certificate of service which declares that service was accomplished by email transmission to a specific phone number, on a specific date, at a specific time.

E. Times.

1. Computation. In computing any period of time prescribed or allowed by these rules, by order of the Hearings Officer, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. As used in this rule, "holiday" includes any day designated as such pursuant to Section 8-1 of the Hawai'i Revised Statutes.
2. Enlargement. When by these rules or by a notice given thereunder or by order of the Hearings Officer an act is required or allowed to be done at or within a specified time, the Hearings Officer for cause shown may at any time in his or her discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

VI. **HEARING PROCEDURES**

A. Hearing Officer.

1. The Hearings Officer shall control the course of the hearing, administer oaths, receive evidence, hold appropriate conferences before or during hearings, rule on all objections or motions, receive offers of proof, fix the time for the filing of submittal, dispose of any other matter that normally and properly arises in the course of a hearing, and take all other actions authorized by law that are deemed necessary to the orderly and just conduct of the hearing.

B. Parties. The Department of Finance and the petitioner shall in every case be parties to such proceedings.

C. Continuance. The Hearings Officer may, for good cause, postpone or continue any hearing from day to day, or to a later date, or to a different place without notice other than the announcement thereof at the hearing.

D. Ex Parte Communication. No person whether or not a party to a hearing before the Hearings Officer shall communicate ex parte regarding any subject matter of the proceeding with the Hearings Officer.

E. Notice of Hearing.

1. The notice of hearing shall be served upon all parties at least fifteen (15) days prior to the hearing date, unless otherwise provided by law.
2. The notice shall contain the appropriate information as required in HRS, 91-9.

F. Waiver of Procedure. Any procedure pursuant to these rules may be modified or waived by stipulation of the parties and informal disposition may be made of any hearing by stipulation, settlement, agreement, consent order, or default.

G. Prehearing Conference. The Hearings Officer may hold a prehearing conference with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed witness testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding.

H. Requests for Transcripts. Unless otherwise provided by law or specifically ordered by the Hearings Officer, it shall not be necessary to transcribe the record unless required for purposes of rehearing or court review. Should a party to a hearing under these rules desire that transcripts be provided when not otherwise required, the party may, prior to commencement of hearing, either; (1) deposit an amount sufficient to cover transcribing and printing costs as prepared by a certified court reporting service; (2) provide a certified court reporting service at the hearing; (3) enter into an agreement with the County that will address the preparation and printing costs of transcripts.

I. Just, Expeditious, and Inexpensive Determination.

1. To avoid unnecessary cumulative evidence, the Presiding Officer may limit the number of witnesses or the time for testimony upon a particular issue.

2. The Presiding Officer shall not order or approve civil style discovery against non-parties; and unless stipulated to by all parties, the hearings officer shall not order or approve civil style discovery between parties. Civil style discovery refers to procedures initiated by parties under judicial rules of civil procedure, specifically including but not limited to, depositions on oral or written questions, written interrogatories, requests for production of documents or things, requests to enter land or other property, physical and mental examinations, and requests for admissions.

J. Stipulation as to Findings of Facts, Conclusions of Law. Nothing in these rules shall prohibit parties from entering into appropriate stipulations as to findings of fact, conclusions of law, and conditions, if any, concerning the subject petition for appeal.

1. A petitioner who desires to enter into a stipulation shall prepare a stipulation as to any and all findings of fact, conclusions of law, and conditions, if any, concerning the subject petition.
2. All parties shall sign the proposed stipulation as to any or all proposed findings of fact, conclusions of law, and conditions and a proposed decision and order, if at all, and shall submit such stipulation to the Hearings Officer seven (7) days prior to the hearing date, unless otherwise permitted by the Hearings Officer.
3. The Hearings Officer may require the parties to submit additional evidence concerning the stipulation and proposed decision and order.
4. The Hearings Officer may approve the proposed decision and order by amending or adopting the proposed decision and order.

K. Order of Hearing Procedure. At the commencement of the hearing, the Hearings Officer may read the notice of hearing and then briefly outline the procedures to be followed, which shall be in the following manner:

1. Presentation of Evidence. The petitioner's presentation shall be first, followed by the Department.
2. Cross-Examination. Each Party shall have the right to conduct such cross-examination of other Parties and their witnesses as may be required for a full and true disclosure of the facts. The order of cross-examination and re-cross shall be determined by the Hearing Officer.

3. Rebuttal Evidence. Each Party shall be afforded the opportunity for rebuttal in the same order as above.
4. Close Contested Case Hearing. Upon completion of all testimony and evidence submitted by each party and their witnesses, the Hearing Officer shall close the Contested Case portion of the Hearing.
5. Request to Submit Proposed Findings of Fact, Conclusions of Law, Decision and Order. A party may, after the close of the evidentiary portion of the hearing request the opportunity to submit proposed Findings of Fact, Conclusion of Law, Decision and Order. If such a request is made, the Hearings Officer shall also allow all other parties to submit proposed Findings of Fact, Conclusion of Law, Decision and Order. Should a party not submit a request at such time, the party's right to submit such document shall be deemed waived and the Hearings Officer may commence with appropriate decision-making action. If a request is made, the Hearings Officer may continue the docket and set a timetable for the conduct of the post-hearing proceedings pursuant to these rules.

L. Co-Counsel. No more than two (2) counsel may appear for any party at any proceeding before the Hearings Officer. Where a party is represented by more than one counsel, only one of the counsel shall be permitted to cross-examine a witness or to state any objections or make closing arguments.

M. Requests for Subpoenas.

1. Subpoenas of Witnesses. Requests for the issuance of subpoenas requiring the attendance of a witness for the purpose of taking oral testimony before the Hearings Officer shall be in writing, and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only parties or the Hearings Officer may request the issuance of a subpoena.
2. Every subpoena shall state the title of the proceeding for which it is to be issued, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.
3. Subpoenas Duces Tecum. Requests for the issuance of subpoenas for the production of documents or records shall be in writing; shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved.

4. Who May Issue Subpoenas. Subpoenas may only be issued by the Hearings Officer. No subpoena shall be issued unless the party requesting the subpoena has complied with the provisions herein and gives the names and address of the desired witness. Signed and sealed blank subpoenas shall not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall show at whose instance the subpoena is issued. The parties at whose instance a subpoena is issued shall arrange for service thereof, and shall file a return and an acknowledgment of service thereon.
5. Fees and Mileage. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in Circuit Courts of the State of Hawai'i and such fees and mileage shall be paid by the party at whose instance the witness appears.
6. Oath. Witnesses shall be sworn under oath or affirmation prior to testifying.

N. Consolidation. The Hearings Officer, upon his/her own initiative or upon motion may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if he/she finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

O. Substitution of Parties. Upon motion and for good cause shown, the Hearings Officer may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion.

P. Motions.

1. All motions, other than those made during a hearing, shall be made in writing to the Hearing Officer, shall state the relief sought, and shall be accompanied by an affidavit, declaration, and/or memorandum setting forth the grounds upon which they are based.
2. All motions are non-hearing and shall be decided upon written submission, unless the Hearing Officer elects to set a time for hearing.

3. Unless otherwise specified by the Hearing Officer, a memorandum in opposition or a counter affidavit or declaration may be filed and served on all parties no later than fifteen (15) days after service of the motion.
4. No reply or supplemental memoranda shall be filed unless specifically allowed by the Hearing Officer.
5. The original documents and proof of service shall be filed with Hearing Officer. When service is made by mail, two calendar days shall be added to the periods required in 6.15C.
6. Unless otherwise specified by the Hearing Officer, all pretrial motions shall be filed no later than twenty (20) days prior to the assigned contested case hearing date.

Q. Evidence.

1. Form and Admissibility. The Hearings Officer shall not be bound by the Hawai'i Rules of Evidence relating to the admission or rejection of evidence, but may exercise his/her own discretion in such matter with a view towards insuring that justice is served.
2. Burden of Proof. Except as otherwise provided by law, the party initiating the petition to appeal shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.
3. Exclusion of Irrelevant Material. As a matter of policy, the Hearings Officer shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.
4. Ruling. The Hearings Officer shall rule on the admissibility of all evidence.
5. Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the ground relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.
6. Offer of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which the objection has been sustained.

7. Prepared Testimony. With the approval of the Hearings Officer, a witness may read into the record his/her testimony on direct examination. Before any prepared testimony is read, unless excused by the Hearings Officer, the witness shall deliver copies thereof to the Hearings Officer, and all counsel or parties. If the Hearings Officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without hearing, provided that copies thereof shall have been served upon all parties and the Hearings Officer to permit proper cross examination of the witness on matters contained in said prepared testimony.

8. Documentary Evidence. If relevant and material matter offered in evidence is embraced in a document containing other matters, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the Hearings Officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.

9. Exhibits.
 - i. Form-Size. Exhibits shall be clearly and permanently legible and in such form as may be prescribed by the Hearings Officer. Exhibits shall be bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.
 - ii. Copies. When exhibits are offered in evidence, and when practicable the original and two (2) copies shall be furnished to the Hearings Officer with a copy to each party to the proceeding, unless such copies have been previously furnished or the Hearings Officer directs otherwise.

10. Official Notice of Facts. Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawai'i. Official notice may also be taken of generally recognized technical or scientific facts within the Department's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

11. Additional Evidence. No supplemental evidence shall be accepted into the record after the evidentiary portion of the hearing is closed unless agreed to by the parties and approved by the Hearings Officer.

R. Post Hearing Procedures.

1. Upon completion of taking of evidence, the Hearings Officer shall issue findings of fact, conclusions of law, and decision and order that states an analysis and reasons therefore, and shall submit the report of the proceeding and the record to the Department.
2. The record shall include the petition, notice of hearing, motions, rulings, orders, transcript of the hearing, if required, documentary evidence, stipulations, findings of fact, or other documents submitted by the parties, objections to the conduct of the hearing and the report of the Hearings Officer and all other matters placed in evidence.
3. The Hearings Officer shall cause a copy of the report to be served upon all parties to the proceedings.
4. Any party aggrieved by a final decision and order by the Hearings Officer or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under Chapter 91 of the HRS; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law.

**RULES AND REGULATIONS FOR REVOCABLE PERMITS TO
VEND WITHIN THE COUNTY RIGHT-OF-WAYS**

Pursuant to Hawai'i Revised Statutes §91-3, public hearings were held on July 18, 2018 and November 15, 2018. The "Rules and Regulations for Revocable Permits to Vend Within the County Right-Of-Ways" were adopted by the County of Kaua'i Department of Finance at the public hearing held on November 15, 2018.

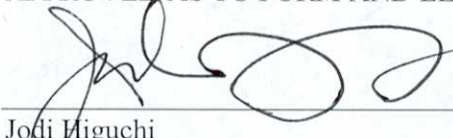
The Rules shall become effective ten (10) days upon filing with the County Clerk of the County of Kaua'i.

ADOPTED:



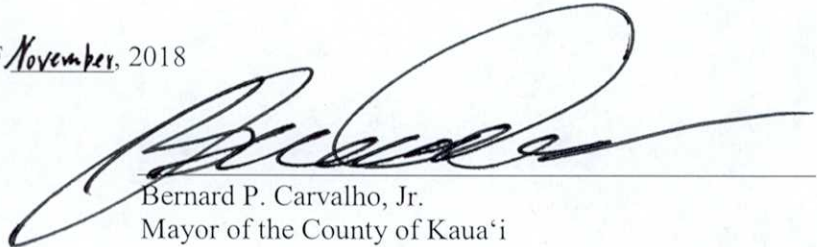
Ken Shimonishi
Director of Finance

APPROVED AS TO FORM AND LEGALITY:



Jodi Higuchi
Deputy County Attorney

APPROVED THIS 21st DAY OF November, 2018



Bernard P. Carvalho, Jr.
Mayor of the County of Kaua'i

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 21st DAY OF November, 2018



Jade K. Fountain-Tanigawa
County Clerk