



A BILL FOR AN ORDINANCE

RELATING TO NUISANCES ON PUBLIC SIDEWALKS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. HRS Section 46-1.5(12) authorizes the City and County of Honolulu to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance from sidewalks. The purpose of this ordinance is to authorize the summary removal by the city of public nuisances from the sidewalk.

SECTION 2. Chapter 29, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Article __. Sidewalk Nuisances

Sec. 29-__ .1 Council finding and declaration of nuisance.

The Council finds and declares that objects erected, established, placed, constructed, maintained, kept or operated on sidewalks or affixed to city property within a sidewalk to be public nuisances, hazardous to the health, safety, and welfare of the residents of the city, and therefore, shall be subject to summary removal pursuant to this article. Nuisances on public sidewalks are inconsistent with and frustrate the purposes, functions, and activities for which the sidewalk is intended. The purpose of this article is to promote traffic and pedestrian health, safety, and welfare; prevent visual blight; and ensure that public sidewalks are free of obstacles and available for use and enjoyment of members of the public.

Sec. 29-__ .2 Definitions.

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

"Affix" means to attach, fasten, join, stick, or hang.

"City property" means any property owned or controlled by the City and County of Honolulu including, but not limited to, trees, walls, fences, shelters, buildings, monuments, structures, signs, light poles, benches, planters, or traffic control devices.

"Director" means the director and chief engineer of the department of facility maintenance or the director's authorized representative.



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"Expressive activity" means speech or conduct, the principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of political, religious, philosophical, or ideological opinions, views, or ideas, and for which no fee is charged or required as a condition of participation in or attendance at such activity. Expressive activity generally would not include sports events, such as marathons; fundraising events; beauty contests; commercial events; cultural celebrations or other events the principal purpose of which is entertainment.

"Object" means any material that can be seen and touched, and includes, but is not limited to, bicycles, mopeds, furniture, or equipment.

"Roadway" means that portion of a street improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.

"Sidewalk" includes sidewalks and replacement sidewalks.

"Sidewalk-nuisance" means:

- (1) Any object or collection of objects constructed, erected, installed, maintained, kept, or operated on or over any sidewalk; or
- (2) Any objects affixed to city property within a sidewalk;

including but not limited to stalls, stands, tents, furniture, and containers, and any of their contents or attachments.

"Structure" means any edifice, building or piece of work artificially built up or composed of parts and joined together in some definite manner whether the same be movable or immovable.

"Traffic control device" shall have the same meaning as "official traffic control device" as the latter is defined in HRS Chapter 291C.

Sec. 29-__3 Summary removal of sidewalk-nuisances.

- (a) No person shall erect, establish, place, construct, maintain, keep or operate any sidewalk-nuisance on any sidewalk, or affix a sidewalk nuisance to any other city property within a sidewalk, except as provided in Section 29-____.6 or as otherwise authorized by law. Any sidewalk-nuisance in violation of this subsection shall be subject to summary removal.



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- (b) The director may immediately and summarily remove or cause the immediate and summary removal of a sidewalk-nuisance. A sidewalk-nuisance may be disassembled for removal.
 - (1) The director shall store or cause to be stored any sidewalk-nuisance removed pursuant to this subsection until the director is authorized to destroy, sell, or otherwise dispose of the sidewalk-nuisance pursuant to the applicable provisions of this section, but in no event less than 30 calendar days from the date of removal.
 - (2) Notification.
 - (A) Written notice of the city's removal of the sidewalk-nuisance shall be posted for three consecutive days following removal of the sidewalk-nuisance on the city property where the sidewalk-nuisance was removed. If notice cannot be posted as provided, then it shall be posted on the internet website for the city for three consecutive days following removal of the sidewalk-nuisance.
 - (B) The written notice shall state:
 - (i) The date, violation and removal of the sidewalk-nuisance;
 - (ii) That the owner may reclaim the sidewalk-nuisance within 30 calendar days from the date of the removal of the sidewalk-nuisance;
 - (iii) Contact information and instructions on how the owner may reclaim the sidewalk-nuisance;
 - (iv) That the owner has the right to appeal the removal of the sidewalk-nuisance in accordance with subsection (d); and
 - (v) That, if not timely reclaimed or the subject of timely appeal, the sidewalk-nuisance shall be subject to disposal.
 - (C) If a name and mailing address has been legibly and conspicuously provided on a sidewalk-nuisance removed pursuant to this subsection, then the director also shall issue a written notice, by certified mail, to the person named on the sidewalk-nuisance within



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seven calendar days following the date of the removal of the sidewalk-nuisance; provided that if only an address is provided on a sidewalk-nuisance, the director shall issue a written notice, by certified mail, addressed to the "Occupant" of that address, within seven calendar days following the date of the removal of the sidewalk-nuisance. No such notice shall be required if only the name is provided and the director is unable after a good faith effort to determine the address of the named person.

- (D) Shopping Carts. If a shopping cart is removed and impounded pursuant to this subsection, the city shall notify the Retail Merchants Association or its successor organization, of the location where the shopping cart may be claimed. The Retail Merchants Association or its successor organization shall notify the owner of the shopping cart or owner's agent of the location where the shopping cart may be claimed. The owner or owner's agent shall have three business days from the date the city notifies the Retail Merchants Association or its successor organization to retrieve the shopping cart without charge. If the owner or owner's agent fails to retrieve the shopping cart within three business days, the shopping cart shall be treated as a removed sidewalk-nuisance pursuant to this subsection, and written notice shall be provided as in subsection (b)(2), and the owner shall be subject to a fee pursuant to subsection (c), unless the owner successfully contests the removal as provided in subsection (d).
- (3) The director may destroy, sell, or otherwise dispose of a sidewalk-nuisance removed under the provisions of this subsection after a period of 30 calendar days from the date of removal of the sidewalk-nuisance unless a timely appeal has been filed under subsection (d).
- (c) A sidewalk-nuisance removed pursuant to this section may be reclaimed by the owner within the applicable 30-day period specified in subsection (b). To reclaim a sidewalk-nuisance, an owner or the owner's authorized representative shall make arrangements with the director to reclaim the sidewalk-nuisance; shall appear in person within the applicable 30-day period at the time and place designated by the director; shall provide satisfactory proof of identity and entitlement; and shall pay to the city a \$200.00 fee for the city's cost of removal, storage and handling of the sidewalk-nuisance, whereupon the city shall release the sidewalk-nuisance to the owner or the owner's authorized representative, as is.



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- (d) An owner of a sidewalk-nuisance removed pursuant to this section may contest the removal by written request for a hearing to the director received no later than 25 calendar days after removal of the sidewalk-nuisance. The owner shall provide a current mailing address to receive the notice of the decision of the director regarding the appeal. The hearing shall be conducted by the director in accordance with the provisions of HRS Chapter 91. The appeal shall be limited to a determination of whether the sidewalk-nuisance was properly removed and a fee properly assessed pursuant to this section. The director shall continue to store or have stored the sidewalk-nuisance until the appeal has been decided. If the decision of the director is in favor of the owner, then the owner may arrange to reclaim the sidewalk-nuisance without paying the fee for the removal, storage, and handling of the sidewalk-nuisance. If the decision of the director is in favor of the city, then the sidewalk-nuisance may be returned to the owner or the owner's authorized representative upon payment of the removal, storage, and handling fee of \$200.00. If the owner or the owner's authorized representative fails to reclaim the sidewalk-nuisance within seven calendar days of the postmark for the notice of the decision, the sidewalk-nuisance may be destroyed, sold, or otherwise disposed of by the director.

Sec. 29-___.4 Rules.

The director may adopt rules pursuant to HRS Chapter 91 for the implementation of this article.

Sec. 29-___.5 Miscellaneous provisions.

- (a) The provisions of this article shall be in addition to and shall not limit any other applicable provisions of federal, state or city law, ordinance, or rule.
- (b) The provisions of this article shall not create a duty on the part of the city regarding sidewalk accessibility other than is already required by law.

Sec. 29-___.6 Exceptions.

The prohibitions in this article shall not apply to the following:

- (1) An object or collection of objects smaller than 42 inches in length, 25 inches in width, and 43 inches in height, provided that:



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- (A) The object or collection of objects is attended to by an individual at all times;
 - (B) The object or collection of objects, or any portion thereof, does not extend into the roadway;
 - (C) The object or collection of objects does not obstruct the use of 36 inches in width of the sidewalk and does not obstruct the free movement of pedestrians;
 - (D) The object or collection of objects does not obstruct individuals from access to or egress from legally parked vehicles;
 - (E) The object or collection of objects does not interfere with other lawful activities taking place on the sidewalk and its placement complies with other provisions of this chapter; and
 - (F) The object or collection of objects does not otherwise threaten public health and safety.
- (2) An object or collection of objects used in the performance of a government-approved public safety, maintenance or construction function;
- (3) Tables or other portable outdoor furniture or items used for the purpose of displaying literature or other expressive material or otherwise directly facilitating expressive activities; provided that the tables, furniture, or items:
- (A) Are attended to by an individual at all times;
 - (B) Do not extend into the roadway;
 - (C) Do not obstruct the use of 36 inches in width of the sidewalk and do not obstruct the free movement of pedestrians;
 - (D) Do not obstruct individuals from access to or egress from legally parked vehicles;
 - (E) Do not interfere with other lawful activities taking place on the sidewalk and comply with other provisions of this chapter;



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- (F) Do not otherwise threaten public health and safety; and
 - (G) Are not larger than five feet by two feet or ten square feet for each individual engaging in the expressive activity.
- (4) The object or collection of objects is expressly permitted on the sidewalk or attached to city property within a sidewalk pursuant to a permit issued under this chapter or under Chapter 41, Article 22; or
 - (5) The object is a bicycle or moped parked on the sidewalk or affixed to city property within a sidewalk under Section 15-13.11(c) or 15-18.6.

Sec. 29-__7 City not liable.

The owner of a removed sidewalk-nuisance shall bear the responsibility for any loss or damage to the sidewalk-nuisance. The city, its officers, employees, and agents shall not be liable to any person entitled to a removed sidewalk-nuisance because of any disposal or other disposition of the property made pursuant to this article.

The remedies available to a person entitled to a removed sidewalk-nuisance are limited to those provided in this article.

Sec. 29-__8 Severability.

The provisions of this article are declared to be severable. If any portion of this article is held invalid for any reason, the validity of any other portion of this article which may be given effect without the invalid portion shall not be affected and if the application of any portion of this article to any person, property or circumstance is held invalid, the application of this article to any other person, property or circumstance shall not be affected."



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SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Ernest Martin

Ann Kobayashi

Ikaika Anderson

DATE OF INTRODUCTION:

February 14, 2013
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu