

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

May 8, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

SUBJECT: REQUEST APPROVAL TO ADOPT AMENDMENTS TO HAWAII ADMINISTRATIVE RULES (HAR), TITLE 13, SECTION 256-73.13, AHU O LAKA (KANEOHE SANDBAR), REMOVING THE SUNSET DATE FOR THE RULE AND MAKING THE SAFETY ZONE AROUND AHU O LAKA, ESTABLISHED BY HAR § 13-256-73.13 PERMANENT. HAR § 13-256-73.13 PROHIBITS POSSESSION, USE OR CONSUMPTION OF ALCOHOL; DISORDERLY BEHAVIOR; AND PROHIBITS A PERSON UNDER THE INFLUENCE OF ALCOHOL, NARCOTICS OR DRUGS FROM REMAINING IN OR ENTERING THE SAFETY ZONE

PURPOSE: To remove the sunset date and make HAR § 13-256-73.13 permanent. HAR § 13-256-73.13 identifies a safety zone around Ahu o Laka (also known as the Kaneohe Sandbar) in Kaneohe Bay to protect the public while visiting Ahu o Laka during certain three-day weekends involving a State holiday. HAR § 13-256-73.13 prohibits possession, use, or consumption of alcohol in the safety zone; prohibits a person under the influence of alcohol, narcotics, or drugs from remaining in or entering the safety zone; and prohibits disorderly behavior while in the safety zone (See Exhibit A).

STATUTE: Hawaii Revised Statutes §§ 200-2, 200-3, 200-4, 200-14, 200-14.5

BACKGROUND:

On December 12, 2014, as Item J-1 of the agenda, the Board of Land and Natural Resources (Board) approved the Division of Boating and Ocean Recreation's (DOBOR) request to initiate rule making regarding amendments to HAR § 13-256-73.13, to repeal the sunset date and make the rule permanent.

Upon approval by the Board to proceed to public hearing, DOBOR submitted the draft rule to the Small Business Regulatory Review Board (SBRRB) for comment and received confirmation from the SBRRB via email on February 3, 2015 that the SBRRB did not have any comment on the proposed amendment. DOBOR also requested approval from the Governor to proceed to public on January 5, 2015 and approval was received in February 2015. On March 2, 2015, DOBOR placed a legal ad in the Star Advertiser in accordance with Chapter 91 HRS. DOBOR

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also worked with the DLNR Public Information Office to issue a press release, posted notice of the public hearing on the DLNR Facebook feed and updated the website to include the notice of public hearing and a copy of the proposed amendment.

The public hearing was held on April 7, 2015 at Heeia Elementary School in Kaneohe from 6 P.M. – 8 P.M. Approximately 25 people signed the attendance sheets for the meeting with 12 individuals providing oral testimony. A total of 18 pieces of written testimony were received by US Postal Service, Facsimile, hand delivery, or by email.

21 individuals who provided written or oral testimony were opposed to the proposed rule. The general consensus among those opposed was that the current rules are adequate and just need to be enforced by DOCARE. Other comments received were that closed containers should be allowed on vessels, possession of closed containers should not be prohibited, the rule penalizes responsible boaters and that enforcement of existing state rules regarding intoxication and alcohol consumption should be enforced on land at the harbor. Many of the individuals opposed to the ban acknowledged that the ban worked to keep down large parties etc., but they still felt that the ban was too restrictive. 6 individuals who provided written or oral testimony supported the rule stating that the sandbar has been a safer place since the safety was implemented and that Ahu O Laka has become a friendlier place for family recreation.

Since implementation of the Ahu O Laka Safety Zone 3 years ago, the public, DOBOR and DOCARE have noted a drastic decline in illegal activity and violent incidents during the holiday weekends when the ban on alcohol and illegal narcotics is in effect. Having considered all the testimony received during the public hearing process for the aforementioned rule, DOBOR does not find that any additional amendments to the substantive portions of the proposed rule are necessary. DOBOR recommends one additional amendment in order to update the exhibit designation in the rule and update the corresponding exhibit. This amendment does not create a substantive change to the rule and therefore additional public hearing is not necessary.

RECOMMENDATIONS:

That the Board

1. Approve and adopt the amendment to HAR § 13-256-73.13 repealing the sunset date and making the Safety Zone around Ahu O Laka permanent.

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2. Forward the HAR to the Governor's Office for final approval and filing with the Office of the Lieutenant Governor.


Respectfully submitted,



Edward R. Underwood
Administrator

Attachment: Exhibit A (HAR Chapter 256, Exhibit O-9. Location map with the Safety Zone demarcated as zone "J").

APPROVED FOR SUBMITTAL



Carty S. Chang
Interim Chairperson

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

Amendments to Chapter 13-256
Hawaii Administrative Rules

1. Chapter 13-256, Hawaii Administrative Rules, by amending subsection 13-256-73.13(e) to read as follows:

"§13-256-73.13 Ahu o Laka safety zone. (a) The Ahu o Laka safety zone is the area encompassed within the boundaries designated as Zone [~~H-2~~] J shown on Exhibit [~~"X-2,"~~] O-9 "Kaneohe Bay Ocean Waters" dated [~~June 8, 2011~~] April 21, 2015, and located at the end of this subchapter. The boundaries of Zone [~~H-2~~] J are as follows:

Beginning at a point in the water at 21°28.462'N 157°49.203'W, then by straight lines drawn to a point at 21°27.9647'N 157°49.140'W, then to 21°27.514'N 157°48.115'W, then to 21°28.030'N 157°47.940'W, then back to the starting point.

(b) For Memorial Day, Independence Day, and Labor Day holidays as designated in section 8-1, Hawaii Revised Statutes, if any of these three designated holidays involves a three-day weekend, Zone [~~H-2~~] J is subject to the following restrictions during the time period of 12:00 a.m. to 11:59 p.m. on each day of the three-day weekend:

- (1) No person shall possess, use, or consume alcohol within Zone [~~H-2~~] J;
- (2) No person shall enter or remain in Zone [~~H-2~~] J while under the influence of alcohol, narcotics, or drugs; provided that a person may use or possess drugs legally prescribed by that person's physician; and
- (3) No person within Zone [~~H-2~~] J shall:
 - (A) engage in fighting or threatening, or violent or tumultuous behavior;
 - (B) make unreasonable noise;

- (C) subject another person to offensively coarse behavior or abusive language which is likely to provoke a violent response; or
- (D) create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

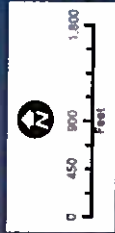
Noise is unreasonable, within the meaning of subparagraph (3)(B), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the time of day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a law enforcement officer that the noise is unreasonable and should be stopped or reduced.

(c) In addition to any other penalty authorized by law, a violation of any of the restrictions described in subsection (b) shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes.

(d) If any term or provision of this section, or the application thereof to any person or circumstance is found unenforceable or invalid to any extent, the remainder of this section or the application of such term or provision to persons or circumstances other than those to which it is held unenforceable or invalid, shall not be affected thereby, and each remaining term and provision of this section shall be valid and enforceable to the fullest extent permitted by law.

~~[(c) This rule shall take effect ten days after the filing date with the Office of the Lieutenant Governor and shall be repealed three years from its effective date unless this provision is sooner repealed or otherwise amended.]~~" [Eff

] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)



Zone locations are approximate
Map Date: April 21, 2015
HAR §§ 19-256-73, 13-256-73.13

ZONE D



ZONE J

KAPAPA ISLAND

KAHALU'U POND



ZONE I



ZONE C



ZONE B



ZONE E



ZONE H



ZONE F



ZONE A



ZONE G

HE'EIA KEA
SMALL BOAT HARBOR

Exhibit A

EXHIBIT O-9: KĀNE'ŌHE BAY OCEAN WATERS
Ocean Recreation Management Area

2. New material is underscored.

3. These amendments to chapter 13-256, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rule, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which was adopted on _____, by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

CARTY S. CHANG
Interim Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General