

RULES REGARDING ABANDONED PROPERTY FOUND ON REAL PROPERTY OWNED
BY HAWAI'I COMMUNITY DEVELOPMENT AUTHORITY

- I. PURPOSE: Pursuant to the Proclamation dated October 16, 2015, and Supplementary Proclamation dated October 26, 2015, issued by the Officer of the Governor, State of Hawai'i, these rules are adopted to provide:
- A. A process for the collection, storage, retrieval (reclaiming), and disposition of personal property found on real property owned and managed by Hawai'i Community Development Authority (HCDA), which may include, but is not limited to, the personal property of a homeless person;
 - B. Due process to persons who own or claim entitlement to personal property remaining on real property owned by HCDA that is closed to the public; and
 - C. Health and safety protections to members of the public and those who handle such personal property; allow HCDA to maintain its real property in a clean, sanitary and accessible condition, and promote the public health, safety and general welfare by ensuring these premises remain readily accessible for its intended uses.

II. DEFINITIONS

“Abandoned Property” means any personal property of any kind or nature, including but not limited to clothing, personal care items such as personal hygiene products and medicines, household items, materials, containers, cardboard, camping items, furniture, equipment, fixtures, bicycle or moped or motorcycle as defined in section 291C-1, Hawai'i Revised Statutes (HRS), that has been left in, at, or on any HCDA Property that is closed to the public, and the owner of the Abandoned Property is not otherwise permitted to be on the premises. This definition of Abandoned Property differs from the definition in Hawai'i Administrative Rules (HAR) section 15-210-2. This difference is intentional and to the extent that these rules conflict with HAR chapter 15-210, these rules shall apply.

“Camping Items” means tents, sleeping bags, mats, mattresses, blankets, tarps or the like.

“Disposal” means the process listed below for dealing with Abandoned Property.

“HCDA” means the Hawaii Community Development Authority, its current or former officers, directors, board members, employees, representatives and authorized agents, or such authority's successor in interest.

“HCDA Property” means real property owned and managed by the Hawai'i Community Development Authority and not leased to another entity within the Kakaako Community Development District. Such real property includes, but is not limited to, parks, park roadways, parking lot, beaches and beach rights of way, and does not include real property owned by HCDA that is leased to another person or entity.

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III. ABANDONED PROPERTY PROHIBITION

- A. Abandoned Property is prohibited and may be removed by HCDA.
- B. Moving Abandoned Property to another location on HCDA Property is still property "left in, at, or on any HCDA property" within the meaning of the "Abandoned Property" definition, and shall not be considered to be removing Abandoned Property from HCDA Property.
- C. This section shall not apply to personal property that, pursuant to statute, ordinance, permit, regulation, or other authorization by the City and County of Honolulu or the State of Hawai'i, is placed on HCDA Property.

IV. DISPOSAL, REMOVAL, NOTICE & STORAGE PROCEDURE

A. IMMEDIATE DISPOSAL

- 1. HCDA may dispose of immediately, in any manner without notice, verbal or written, Abandoned Property:
 - i. Of a perishable nature, including but not limited to items that require refrigeration;
 - ii. Posing a threat to the health, safety, or welfare of the public, including but not limited to property containing flammable or otherwise hazardous chemicals, or similarly dangerous items that, if stored, could cause fire, explosion, identifiable disease;
 - iii. Deemed to be inappropriate for storage for health and safety reasons by HCDA, including but not limited to property that is wet, soiled, dirty, sharp, odorous, contaminated by mold or infested with insects, roaches, or bed bugs; or
 - iv. Where the apparent owner of the property requests or permits such disposal.
- 2. If the apparent owner is present at the time that HCDA is removing the property, the owner will be provided a reasonable opportunity to remove the property from HCDA Property.
- 3. HCDA shall photograph, video, and/or describe in writing any Abandoned Property immediately disposed of pursuant to this section and shall maintain a record of the approximate location, date and method of disposal of such Abandoned Property.

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B. REMOVAL

1. HCDA may remove Abandoned Property that:
 - i. Interferes with the orderly management of HCDA Property;
 - ii. Remains in a public park after park closure hours; or
 - iii. Where the apparent owner of the property requests or permits such removal.
2. If the apparent owner is present at the time that HCDA is removing the property, the owner will be provided an opportunity to remove the property from HCDA Property.
3. HCDA shall photograph, video and/or describe in writing any Abandoned Property removed pursuant to this section and shall maintain a record of the approximate location, date and method of disposal of such Abandoned Property.

C. EXCLUSION FROM ENFORCEMENT AREA

1. Members of the public may be excluded from the area within which the Abandoned Property is being removed by HCDA; the exclusion area may extend up to ten (10) feet from any property to be removed;
2. A person claiming ownership of the Abandoned Property shall be permitted to enter the exclusion area for purposes of removing that property so that the property will not be removed by HCDA; provided, however, that moving Abandoned Property from HCDA Property to another location within the same HCDA Property, or to another HCDA Property shall not be considered removal from HCDA Property.

D. NOTICE

1. Notice after Removal of Abandoned Property
 - i. If physically feasible, a written notice shall also be left in the area/location from where the Abandoned Property was removed, and be prominently and conspicuously posted for at least three consecutive calendar days following removal of the Abandoned Property. The notice may be collected by HCDA after three days have elapsed. This does not require HCDA to ensure that the notice is in place 72 consecutive hours but requires only inspection at the end of the three day period.
 - ii. Written notice shall also be posted on HCDA's internet website for three consecutive days.

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iii. The written notice shall apprise the owner of the Abandoned Property of the description and location of the removed property and of the intent of HCDA to sell, donate, or otherwise dispose of the property if not claimed within 30 calendar days after removal. The notice shall also include:

1. Date and time the Abandoned Property was taken;
2. Date and time the written notice was originally posted; and
3. Contact information for the owner of the Abandoned Property to use if s/he desires to reclaim the Abandoned Property and the time and location at which the owner needs to reclaim the Abandoned Property.

iv. To the extent possible based on information known to HCDA, an additional written notice shall also be mailed to the person whose property was removed, at that person's last known mailing address.

2. Shopping Carts. If a shopping cart is among the Abandoned Property and has markings indicating that it belongs to a commercial establishment, the managing employee of the nearest outlet of that commercial establishment may be contacted by HCDA to inform him or her of the whereabouts of the shopping cart and the procedure for claiming it. If the shopping cart is not claimed within 15 calendar days of contact by HCDA, HCDA may dispose of the cart as it deems appropriate.

E. STORAGE. Any removed Abandoned Property shall be stored for at least 30 calendar days prior to it being disposed.

F. RECLAMATION OF ABANDONED PROPERTY

1. The owner or any other person entitled to the stored Abandoned Property may repossess the property prior to its disposal upon submitting to HCDA satisfactory proof of ownership or entitlement and payment of all unpaid rent, debts, and charges owing and all handling, storage, appraisal, advertising, and other expenses incurred by HCDA in connection with the proposed disposal of the stored Abandoned Property.
2. Such amounts may be waived by HCDA upon satisfactory showing of inability to pay.
3. A dispute between the owner or other person entitled to the stored Abandoned Property who repossessed the property, and another party shall not constitute a dispute to which the State of Hawai'i or HCDA is a party, and there is no right of action against the State of Hawai'i or HCDA. The State of Hawai'i and HCDA

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may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

E. DISPOSAL

1. If any stored Abandoned Property is not claimed in 30 calendar days, HCDA may dispose of the property by discarding it.
2. Alternatively, if any singular item of Abandoned Property is determined by HCDA to have an estimated value of \$1,000 or more, HCDA may, in lieu of discarding the Abandoned Property, seek to publicly auction the property. In that event, HCDA shall give public notice of the public auction, including a brief description of the property, details of the time and place of the auction and giving notice to all persons interested in claiming the property that unless claims are made by persons who can provide satisfactory proof of ownership before a specified date, the property will be sold at public auction to the highest bidder. Such public notice shall be published at least once in a publication of statewide circulation or in a publication of local circulation where the property was seized; provided that the disposal shall not take place less than five calendar days after public notice has been given. Following proper notices, any item of impounded personal property having an estimated value of \$1,000 or more shall be disposed of by public auction, through oral tenders, or by sealed bids. Where no bid is received, the Abandoned Property may be sold by negotiation, disposed of or sold as junk, kept by HCDA or donated to any other government agency or charitable organization.
3. All expenses of handling, storage, appraisal, advertising, and other sale expenses incurred by HCDA shall be deducted from the proceeds of any sale of the Abandoned Property. Any amount remaining shall be held in trust for the owner of the property for 30 calendar days after sale, after which time the proceeds shall be transferred to the Department of Budget and Finance pursuant to the Unclaimed Properties Act.

V. RECORDS. Records of Abandoned Property not immediately disposed of shall be kept as a public record for a period of not less than one year from the date of disposal of the Abandoned Property

VI. COMPLAINT RESOLUTION

A. All complaints by persons claiming ownership or entitlement to Abandoned Property stored or disposed of under these rules may contact the HCDA property manager, or designee at 808-_____.

B. Any person claiming ownership or entitlement to Abandoned Property stored or disposed of under these rules who wishes to pursue a contested case hearing shall file a request within 15 calendar days of the action or decision for which the contested case hearing is sought pursuant to Hawai'i Administrative Rules §§15-219-45 et seq. HCDA

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shall continue to store the Abandoned Property at issue in the contested case hearing while the case is pending. HCDA may dispose of the Abandoned Property if the contested case hearing decision allows for such disposal.