DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

Adoption of Chapter 15-211
Hawaii Administrative Rules

November 5, 2008

Chapter 15-211, Hawaii Administrative Rules, entitled "Kewalo Basin Rules for Kewalo Harbor and Tariff", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 211

KEWALO BASIN RULES FOR KEWALO HARBOR AND TARIFF

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Preamble

WHEREAS, Kewalo Basin Harbor historically has been an instrumental part of Honolulu's waterfront, serving as a small boat commercial harbor for intra-state commercial activities supplementing the inter-state commerce of larger harbors administered by the Department of Transportation-Harbors Division; and

WHEREAS, it is the intent of the Hawaii Community Development Authority to preserve and protect the commercial heritage of Kewalo Basin while simultaneously operating the harbor in a prudent and professional manner in the best interest of the State of Hawaii and its people, taken as a whole.

KEWALO BASIN RULES FOR KEWALO HARBOR AND TARIFF

§15-211-1 Scope. These rules govern the Kewalo Basin under the jurisdiction of the HCDA. All private installations or construction within the Kewalo Basin boundaries shall also be under the jurisdiction of HCDA. [Eff DEC 0 3 2008] (Auth: HRS §§206E-4, 206E-32) (Imp: HRS §206E-4)

§15-211-2 Definitions; general. As used in this chapter 211 and chapters 212, 213 and 214, unless the context clearly indicates otherwise:

"Berth" means any place where a vessel is made fast to, moored, anchored, laid alongside of, or docked at a pier, wharf, quay, bulkhead, landing, dolphin, anchorage, mooring, or another vessel, in the shore waters, navigable streams, harbor, port, and roadsteads of Kewalo Basin;

"Dockage" means the charge assessed against a vessel when:

(1) Berthed at or made fast to a wharf, dolphin, or other structure;
(2) Lying alongside of or tied up to a vessel which is made fast to or is lying alongside of a wharf, dolphin, or other structure; or
(3) Not tied up to or lying alongside of a wharf but using one by means of boats, rafts, lighters, or otherwise;

"Executive director" means the executive director of the HCDA and any person acting for the executive director under the executive director's authority;

"Flammable liquid" means any liquid which burns or any liquid which gives off flammable vapors (as

determined by the Tagliabue open cup tester, as used for test of burning oils) at or below a temperature of eighty degrees Fahrenheit;

"Gross receipts" means the aggregate amount of the gross income and gross proceeds of sale derived from a trade or business wherein a vessel is used in any manner to promote the trade or business, computed in accordance with the provisions of chapter 237-3, Hawaii Revised Statutes;

"Harbormaster", "harbor manager", or "harbor agent" means any person appointed to that office by the executive director and vested with the operational control of Kewalo Basin. The responsibilities of a harbormaster, harbor manager or harbor agent include, but are not limited to, enforcing rules, mooring and berthing of ships, control of water and air pollution in the harbor, allocation of storage space, and the movement of vessels into, out of, and within Kewalo Basin;

"HCDA" means Hawaii community development authority, a body corporate and public instrumentality of the State of Hawaii, its harbor manager, agent or entity vested with operational control of Kewalo Basin;

"Kewalo Basin" is the name of the mixed use harbor located on the island of Oahu, in the Kakaako/Ala Moana district bordered by the Diamond Head boundary of the Kakaako waterfront park, Ahui Street, Ilalo Street, Ala Moana Boulevard, Ala Moana beach park, and the Pacific Ocean excluding the Kewalo Basin park and fast lands not dedicated to maritime use;

"Kewalo Basin Park" means that land area within Kewalo Basin whose designated land use is park under HCDA makai area plan, as existing or may be amended;

"Manager" means any persons appointed to that office by the executive director, and includes the manager's authorized representative. The manager for Kewalo Basin shall also be the harbormaster for Kewalo Basin;

"Mooring" means a berth;

"Parking" means the standing of a vehicle, whether occupied or not, other than temporarily for

the purpose of, and while actually engaged in, loading or unloading of either freight or passengers;

"Parking meter" means a mechanical device located or installed within or upon a curb, sidewalk area or parking area, which records a certain number of minutes or hours, by the use of a time measuring device, for which parking privileges have been extended to persons depositing money and activating the device;

"Parking meter stall" means any stall which is within a parking meter zone, adjacent to a parking meter and which is duly designated for the parking of a single vehicle by lines painted or otherwise durably marked on the curb or on the surface of the street or parking area adjacent to or adjoining the parking meters;

"Passenger" means every person other than the master and members of the crew or other persons employed on board a vessel in the business of that vessel;

"Permit premium" means fee payable to HCDA for partial or full transfer of slip rights to another party as set forth in section 15-214-11;

"Rental" means the transaction by which space is held out under an agreement for a negotiated or predetermined sum to be paid at fixed intervals. Excluded from this definition are dockage, moorage, etc. Included are: office space, storage space in sheds or open areas, parking stalls or areas, locker space, etc.;

"Rules" means the rules governing Kewalo Basin under the jurisdiction of the HCDA, and private installations or construction within harbor boundaries as set forth in this chapter 211 and chapters 212, 213 and 214;

"State" means the State of Hawaii;

"Stop" means the complete cessation of movement;

"Stopping" means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer;

"Ticket booth" means a structure attached to the bulkhead and generally encroaching into the berth

which contains not more than 160 square feet under roof and is used for the sale of tickets, retail, display, promotion or other purposes as provided in and accordance with the terms and conditions of the revocable permit;

"Tow zone" or "tow away zone" means any area where the parking, stopping, or standing of vehicles is prohibited entirely or during specific hours by the HCDA;

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on water, including power boats, ships, tugs, cruise boats, small craft, sailing vessels, barges, scows, lighters, ferry boats, pleasure craft, floating equipment, house boats, floating gear, and any and all other watercraft; and

"Wharf", "pier", or "terminal area" means any area of state property set aside to the HCDA by the governor pursuant to law and devoted to servicing of vessels, including the receiving and discharging of passengers from or onto vessels. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-3 Definitions; small craft. The following definitions pertain particularly to small craft operating within Kewalo Basin governed under this chapter 211 and chapters 212, 213 and 214. When used in this chapter 211 and chapters 212, 213 and 214, unless the context clearly indicates otherwise:

"Agreement" means the written agreement by a boat owner to abide by specified state-imposed conditions prior to being issued a permit to moor in designated berth(s) within Kewalo Basin;

"Application" means a request for a berth assignment at Kewalo Basin for a particular small craft;

"Assigned berth" means a berth that is assigned to a permittee by a valid regular mooring permit;

"Boat owner" means the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a

demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the permittee or the person from whom the vessel is chartered;

"Certificated vessel" means a vessel inspected by the United States Coast Guard and certified safe to carry seven or more passengers;

"Charter boat" means a small craft held out for renting, leasing, or chartering including demise or bare-boat charter;

"Commercial fishing boat" or "commercial fishing vessel" means a vessel outfitted and utilized for fishing or for the taking of fish for purposes of sale which is verified by the HCDA as described in section 15-212-44(d) of these rules as a commercial fishing boat, provided that the vessel is operated in such a manner that revenues from fishing or taking of fish for purpose of sale shall be the principal source of income (55 per cent or greater) for the vessel, the minimum level of gross receipts required of such a vessel is generated, and the captain and crew of such vessel have valid commercial marine licenses issued by the department of land and natural resources. The HCDA shall also be presented satisfactory proof of the vessel's certification by the United States Coast Guard that the vessel meets the federal requirements for commercial fishing industry vessels as mandated by the Commercial Fishing Industry Vessel Safety Act (CFIVSA) of 1988. The Commercial Fishing Industry Vessel Safety Act includes the following: 46 USC 5101, 46 USC 8103, 46 USC 8104, 46 USC 8304, 46 USC 8701, 46 USC 10601, 46 USC 11101, 33 CFR 26, 33 CFR 26.03, 33 CFR 81, 33 CFR 88.05, 33 CFR Part 95, 33 CFR 130, 33 CFR 151, 33 CFR 155, 33 CFR 156, 33 CFR Part 159, 33 CFR 173, 46 CFR Part 4, 46 CFR Part 16, 46 CFR 25, 46 CFR 25.26, 46 CFR 25.30, 46 CFR 26, 46 CFR Part 28 Subpart D, 46 CFR Part 28 Subpart E, 46 CFR 28.080, 46 CFR 28.090, 46 CFR 28.105, 46 CFR 28.110, 46 CFR 28.115, 46 CFR 28.120, 46 CFR 28.125, 46 CFR 28.130, 46 CFR 28.135, 46 CFR 28.140, 46 CFR 28.145, 46 CFR 28.150, 46 CFR 28.155, 46 CFR 28.160, 46 CFR 28.165, 46 CFR 28.205, 46 CFR 28.210, 46 CFR 28.215, 46 CFR

28.225, 46 CFR 28.230, 46 CFR 28.235, 46 CFR 28.240, 46 CFR 28.245, 46 CFR 28.250, 46 CFR 28.255, 46 CFR 28.260, 46 CFR 28.265, 46 CFR 28.270, 46 CFR 28.375, 46 CFR 67-69, 46 CFR 105, and 47 CFR 80;

"Commercial vessel" means charter boat, commercial fishing boat, commercial fishing vessel or cruise boat;

"Cruise boat" means any vessel not designed for open ocean transit engaged in the business of carrying passengers on tours for gain or compensation;

"Fees and charges" means those dues which are assessed by the HCDA for the use of its facilities within Kewalo Basin, such as dockage, moorings and the furnishing of services, such as electricity, water, parking, and other related services;

"Legal owner" means a person who holds unencumbered title to a vessel or is a secured party under a security interest in the vessel;

"Living aboard" means the substantial use of a vessel as a dwelling, abode, place of habitation, living quarters, or residence;

"Mooring fee" means the charge assessed against the owner of a small craft for the use of an assigned mooring at Kewalo Basin;

"Nesting" means the mooring of a vessel or vessels alongside another vessel;

"Owner" means a boat owner;

"Passenger" means every person other than the master and members of the crew or other persons employed on board a vessel in the business of that vessel;

"Person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity;

"Pleasure craft" means any vessel not utilized in any business for gain or compensation, but primarily for personal purposes;

"Regular permittee" means a person holding a valid regular mooring permit;

"Revocable permit" means the document issued and approved by the HCDA and executed by the boat owner in which the owner agrees to use an assigned berth in a

particular manner within Kewalo Basin and agrees to abide by established rules and laws;

"Small craft" means and includes any vessel under sixty-five feet in length, such as, yachts, boats, or any watercraft propelled by any means but used for recreation, pleasure, charter, cruises, or any other commercial venture, including the landing of fish and commercial fishing vessels engaged in fishing in waters of the State. It does not include tugs or tow boats, nor does it include watercraft whose sole or principal use is for purposes of habitation;

"Temporary permittee" means a person holding a valid temporary mooring permit for the interim use of a berth;

"Transient vessel" means and includes any vessel visiting the State for a period of less than ninety days;

"Unassigned berth" means a berth that is not assigned to a permittee by a valid regular mooring permit; and

"Vessel loading zone" means a portion of a harbor facility reserved for the exclusive use of small craft during fueling, loading, or unloading.

[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-4 Delegation of authority. The managers and the harbormasters are the designated representatives of the HCDA and of its executive director and as such are delegated full authority to administer the rules of the HCDA and to establish procedures necessary for the efficient and safe operation of Kewalo Basin. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-5 Implied agreement. The use of the commercial waterways and facilities under the jurisdiction of the HCDA shall constitute a consent to the terms and conditions of these rules, and evidences an agreement on the part of all vessels, their owners and agents, and other users of such waterways and

facilities to be governed by, and to pay all charges specified by, these rules. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-6 Reports. In order to ensure collection of the rentals, tariffs, tolls, charges and fees due the State in accordance with these rules, the HCDA may require submission of reports by the permittees, agents or owners of vessels for which berthing or other services have been provided, on forms furnished by the HCDA. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-7 Liability. Agencies, masters, owners, operators, or charterers loading or unloading at Kewalo Basin shall indemnify, defend, and save harmless the HCDA, its members, and employees from and against all losses, claims, demands, and suits for damages, including death and personal injury, and including court costs and attorneys' fees, incident to or resulting from their operations on the property of the HCDA and the use of its facilities except where the HCDA has been proven to be solely and legally negligent. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-8 Standards. Every vessel and all other personal property and facilities at Kewalo Basin shall be kept in such condition of repair, maintenance, neatness, and orderliness so as not to constitute a common nuisance, substantial danger to person or property, or obstruction to proper public use. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-9 Storage. No person shall store supplies, material, or equipment on catwalks, piers, sidewalks, parking areas, or any other public area at Kewalo Basin, except:

(1) In areas set aside by the HCDA for storage purposes; or
(2) Upon prior consent by the HCDA.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-10 Special areas. The HCDA may designate areas to be used only for specific purposes or operations, which shall be designated by appropriate signs. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-11 Requests and complaints. Requests and complaints on matters relating to these rules shall be made in writing to the executive director. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-12 Enforcement and penalties. These rules have the full force and effect of law pursuant to section 206E-4, Hawaii Revised Statutes. The violation of these rules shall be subject to penalties of not more than $10,000, and pursuant to section 206E-22, Hawaii Revised Statutes.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-13 Severability. The provisions of the rules in this chapter 211 and chapters 212, 213 and 214 are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of the rules or application of the remainder to other persons shall not be affected.
[Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-211-14 Annual report. Within 75 days of the fiscal year end, the executive director shall provide an unaudited annual report of the income, expenses and capital costs for the operations of Kewalo Basin to the HCDA authority at a public meeting and post them on its website. [Eff DEC 0 3 2008] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

Chapter 15-211, Hawaii Administrative Rules, on the Summary Page dated November 5, 2008, was adopted on November 5, 2008, following a public hearing held on August 1, 2007, after public notice was given in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on July 2, 2007.

The adoption of Chapter 15-211 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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APPROVED AS TO FORM:

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Filed

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