

Chapter 34

PUBLIC ACCESS

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Chapter 34**PUBLIC ACCESS****Article 1. General Provisions.****Section 34-1. Title.**

This chapter may be cited as the public access code.
(1996, Ord. No. 96-17, sec. 2.)

Section 34-2. Statutory authority.

This chapter is enacted pursuant to the authority granted by section 46-6.5, Hawai‘i Revised Statutes, as amended.
(1996, Ord. No. 96-17, sec. 2.)

Section 34-3. Definitions.

- (a) For the purpose of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words used herein are defined as follows:
- (1) “Approval” means the final approval granted to a proposed subdivision where the actual division of land into smaller parcels is sought, provided that, where construction of a building or buildings for a multiple-family development is proposed without further subdividing an existing parcel of land, the term “approval” shall refer to the issuance of the building permit.
 - (2) “Dedication” means the conveyance of land, including any improvements, fixtures and facilities appurtenant, or any interest therein, in fee simple or easement.
 - (3) “Director” means the planning director of the County of Hawai‘i.
 - (4) “Easement” means the grant of the right to use a strip of land for specific public access purposes.
 - (5) “Lot” means a building site or a parcel of land shown as a unit on an approved and recorded subdivision as defined in the Hawai‘i county subdivision control code.
 - (6) “Mountain” means those lands situated above the one thousand-foot elevation above sea level.
 - (7) “Multiple-family development” or “development” means buildings or structures containing six or more dwelling units on one lot.
 - (8) “Planning commission” means either the windward or leeward planning commission, or both acting as a joint commission, as provided for in the Charter.
 - (9) “Public access” means a public right-of-way in fee or easement for pedestrian traffic and may also be used as a bikeway, utility easement, or for restricted vehicular traffic.
 - (10) “Public mountain area” means lands publicly owned or privately owned subject to written grants of easements allowing public access and use.
 - (11) “Public shoreline area” means lands fronting a shoreline which are publicly owned or privately owned subject to written grants of easements allowing public access and use.
 - (12) “Public street” and “public highway” mean a publicly owned street or highway or a privately owned street or highway over which rights of public use or access have been granted and duly accepted by the state or county.
 - (13) “Recreational activity” includes, but is not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, water skiing, and viewing or enjoying historical, archaeological, scenic or scientific sites, but excludes any and all commercial activity.

(14) “Shoreline” means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or where there is no vegetation in the immediate vicinity, or the upper limit of the debris left by the wash of the waves, pursuant to chapter 205A, Hawai‘i Revised Statutes, as may be further amended.

(15) “Subdivision” for the purpose of this chapter, means any improved or unimproved land or lands divided or proposed to be divided for the purpose of disposition into six or more lots or parcels.

(1996, Ord. No. 96-17, sec. 2; Am. 2009, Ord. No. 09-118, sec. 23.)

Article 2. Administration.

Section 34-4. Application.

(a) The provisions of this chapter shall apply to applications for all subdivisions and multiple-family developments situated generally between (1) shoreline or mountain areas; and (2) public streets and highways, as the case may be. The director shall determine the applicability of this chapter to particular lots and building sites in conjunction with determining the location and frequency of public accesses as set forth in subsection (c) of this section. A subdivider or developer of a multiple-family development shall, as a condition precedent to final approval of a subdivision or issuance of a building permit for a multiple-family development, dedicate land by right-of-way in fee or easement for public access from a public highway or public street to the following:

(1) Public shoreline areas and the land below the shoreline; and

(2) Public mountain areas where there are existing facilities for hiking, hunting, fruit picking, ti-leaf sliding, other recreational purposes and where there are existing public mountain trails.

(b) The location of public shoreline and mountain areas and existing shoreline, coastal and public mountain trails shall be determined by the director in consultation with the State department of land and natural resources and the department of parks and recreation and shall be established by rule pursuant to chapter 91, Hawai‘i Revised Statutes. The director shall solicit such information from such agencies upon adoption of the ordinance codified in this chapter and from time to time thereafter. Such rules shall include maps depicting the public-owned areas and the approximate location of the existing public trails, and may provide for supplementation of listed areas and trails upon publication of notice in lieu of rule amendment. Provided, that the rules shall be amended not less than every five years to incorporate any supplemental changes made since prior rule adoption and to allow public comments on practices and procedures established under such rules.

(c) The location and frequency of public access shall be established by the director or the planning commission, as respectively authorized under chapters 23 and 25 subject to the provisions of article 3 of this chapter. The director shall establish the preferred public access alignment with consideration of such factors as topography, approximate location along the nearest public street and configuration of the subdivision lots or development site.

(d) Where the lands comprising a proposed subdivision or development do not span the entire distance between a public street and a shoreline or mountain area to which the County has determined by the director that public access is necessary, the director shall require dedication of those segments of the needed public accessway laying within the proposed subdivision or development.

(e) Except as provided in subsection (f) herein below, a multiple-family development approved prior to March 4, 1996 shall be subject to the provisions of this chapter when six or more dwelling units are added or proposed to be added thereto.

- (f) The provisions of this chapter shall not apply to subdivisions or multiple-family developments sanctioned, approved or permitted by a development agreement pursuant to the development agreement code, a change of zone ordinance, or a valid special management area (SMA) permit issued prior to March 4, 1996 when:
- (1) Such agreement, ordinance or SMA permit includes requirements for the dedication of public access to the shoreline, provision of related improvements or a cash payment in lieu thereof; or
 - (2) The director determines that the provisions of the agreement, ordinance or SMA permit, together with one or more related agreements, zoning ordinances or SMA permits covering adjacent lands, was intended by the council or the planning commission, respectively, to comprise an integrated shoreline access system for the lands subject to such related agreements, ordinances or SMA permits; and
 - (3) The permittee is in compliance with the terms of such agreement, ordinance, an SMA permit.
- Provided, this exception shall not apply to any application to amend an SMA permit to allow an increased number of dwelling units or more than a nominal increase in commercial or resort activities, as the director shall determine. When applying the standards of this chapter to applications for amendment or replacement of a valid SMA permit which are not excepted herefrom, the director and the planning commission shall take into account any prior, appurtenant dedications or contributions of land, improvements or cash for public access or shoreline area improvements.
- (g) Where a lot or building is subject to a valid conservation district use permit, the director may waive provisions of this chapter which conflict with such permit.
- (1996, Ord. No. 96-17, sec. 2.)

Article 3. Requirements.

Section 34-5. Subdivision and development of land.

The following standards for public access shall apply:

- (a) Shoreline Access.
- (1) For lands in the RS, RD, RM, V, CO, CN, and CV districts, the desired spacing of public accesses shall be from eight hundred to one thousand feet apart.
 - (2) For lands within a destination resort community or a major, intermediate or minor resort area as defined in the general plan and determined by the director, regardless of the zone district designation(s), the desired spacing shall be from one thousand to two thousand feet apart, provided that the planning commission may extend the spacing to a maximum of two thousand five hundred feet where deemed warranted by site conditions, the particular development plan, or when other special accommodations are provided the public with regard to public access, convenience and comfort.
 - (3) For lands within the A districts, the desired spacing of public access shall be one thousand to one thousand five hundred feet apart for lands zoned A-1a, and one thousand five hundred to two thousand five hundred feet apart for all other zoned districts.
 - (4) For lands in the O and U districts, the desired spacing shall be two thousand to two thousand five hundred feet apart.
 - (5) The desired spacing shall not be applicable along sections of shoreline where the director has determined that:
 - (A) The shoreline is inaccessible by land approach due to extremely hazardous or impassable conditions, such as steep cliffs or other dangerously unstable terrain where no practical remedy is feasible; and

- (B) No public coastal trail exists inland of such intervening hazardous or impassable lands and which leads to an accessible shoreline or public shoreline area within five thousand feet of the subdivision or development.
- (6) A spacing of public access(es) further apart than as set forth in subsections (a)(1) through (a)(4) of this section or the determination of inaccessibility pursuant to subsection (a)(5) of this section shall be approved by resolution of the County council.
- (b) Mountain Access.
 - (1) For all zone districts, the desired spacing shall be determined by the director so as to provide reasonable means to access public trail sections and public facilities, respectively, as the case may be.
 - (2) Provided, no access shall be established:
 - (A) To State-owned land which is not designated by rule pursuant to article 2, section 34-4(b) of this chapter; or
 - (B) To State-owned land which is designated but has not been approved by the State department of land and natural resources.

For mountain lands designated pursuant to article 2, section 34-4(b) of this chapter, the director may make a provisional determination of the necessity of public access and the alignment therefor, but such provisional determination shall expire and be void unless the director has made final determination, with the final approval of the State department of land and natural resources within one hundred eighty days thereafter.
- (c) The location of public access in the vicinity of the subdivision or development, whether existing committed under agreements between landowners and the County, or planned pursuant to an officially adopted plan of the County or State, shall be considered by the director or planning commission, as appropriate, when establishing the required location and alignment of public access(es). Provided, that notwithstanding any officially adopted plan to provide public access, no subdivision within an area lacking public access at the appropriate location or desired spacing shall be exempted from the requirements of this chapter.
- (d) The director shall implement these standards in a manner consistent with article 3, chapter 23. (1996, Ord. No. 96-17, sec. 2.)

Section 34-6. Multiple-family development.

All applications for multiple-family development building permits shall be reviewed by the director, in consultation with the director of parks and recreation and the director of public works to determine the necessity of the public access requirement.

- (a) When it is determined by the director that adequate public access already exists or has been secured from the applicant, the director shall notify the applicant, the director of parks and recreation, and the director of public works so that the building permit may be approved. (1996, Ord. No. 96-17, sec. 2; Am. 2001, Ord. No. 01-108, sec. 1.)

Section 34-7. Width of public access.

The public access shall have a minimum width of ten feet.

(1996, Ord. No. 96-17, sec. 2.)

Article 4. Dedication of Access.

Section 34-8. Subdivision of land.

- (a) Upon review of a subdivision application, when it is determined that public access must be provided, the subdivider shall file the executed documents for dedication of the public access, free and clear of all encumbrances with the director.

- (b) Prior to final subdivision approval, the dedication documents shall be reviewed and approved as to its form and content by the appropriate agencies. The director may thereafter grant approval to the subdivision in accordance with the subdivision rules and regulations of the County.
 - (c) The public access shall be clearly designated on the final map of the subdivision in accordance with the subdivision rules and regulations.
- (1996, Ord. No. 96-17, sec. 2.)

Section 34-9. Multiple-family development.

- (a) When it is determined that public access must be provided upon review of a multiple-family development, the developer shall file a subdivision application to create the public access right-of-way in accordance with the Subdivision Code if the developer elects to provide the access in fee simple. Public access shall be designated on the plot plan and specified in the final plan approval.
 - (b) The developer shall file the executed deeds or grants of easement for dedication of the public access, free and clear of all encumbrances with the director.
 - (c) Prior to final plan approval, the documents shall be reviewed and approved as to its form and content by the appropriate agencies.
 - (d) The public access right-of-way shall be clearly designated on the multiple-family development plan.
- (1996, Ord. No. 96-17, sec. 2.)

Section 34-10. Responsibility for cost of improvements and maintenance.

Upon the acceptance of the dedication of land for a right-of-way for public access by the County, the County shall thereafter assume the cost of improvements for and the maintenance of the public access, unless the subdivider or developer agrees to assume such cost and maintenance. Provided that when a right-of-way is to be dedicated for public access pursuant to article 2, section 34-4(d) of this chapter, the County shall not be obligated to maintain the public access until the entire length of the desired access has been dedicated to the County.

(1996, Ord. No. 96-17, sec. 2.)

Article 5. Use of Public Accesses.

Section 34-11. Regulation of use.

The director, in consultation with the director of parks and recreation and the State department of land and natural resources shall promulgate rules regulating the use of public accesses. Such rules may restrict the hours or days of use and may require the issuance of a permit from the appropriate government agency or a contracted permitting agent for public use in rural areas where the director has determined that site conditions or lack of supervision necessitates special education, direction or control of public users. Provided, that no permitting agent shall be contracted for a term exceeding three years.

(1996, Ord. No. 96-17, sec. 2.)

Section 34-12. Abuse of a public access.

A person commits the offense of abuse of a public access if the person:

- (a) Engages in commercial activity within or upon a public access, or
- (b) Uses a public access other than for transit to and from a recreational activity.

For the purpose of this section, a “person” means an individual, corporation, trust, estate, partnership, association or any other legal entity, and “commercial activity” means the solicitation of a person for the sale or rental of goods or services or any transaction whereby a person receives any benefit or a promise to receive a benefit by providing goods or services to another person.

(1996, Ord. No. 96-17, sec. 2.)

Section 34-13. Penalties.

Any person who violates this chapter shall, upon conviction, be subject to a fine not exceeding \$500. The continuance of any such violation shall be deemed a new violation for each day of such violation.

(1996, Ord. No. 96-17, sec. 2.)

Section 34-14. Maintenance and protection.

Prior to opening any nonurban public access for general usage, the director, in consultation with the director of parks and recreation shall adopt rules to provide for the management of environmental, health and safety impacts thereof, including reasonable educational and maintenance measures to minimize littering, erosion, spreading of plant pest, and trespass upon adjacent private lands.

(1996, Ord. No. 96-17, sec. 2.)

Article 6. Appeal Procedures.

Section 34-15. Filing.

Any person aggrieved by any action taken by the director in the administration of this chapter may file an appeal within thirty days of the action complained of, with the board of appeals.

(1996, Ord. No. 96-17, sec. 2.)