

REPORT OF THE COMMITTEE ON PARKS AND COMMUNITY SERVICES

Voting Members:

Augie Tulba, Chair; Heidi Tsuneyoshi, Vice-Chair;
Carol Fukunaga, Andria Tupola

Committee Meeting Held
November 18, 2021

Honorable Tommy Waters
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Parks and Community Services, which considered Bill 34 (2021), CD1 entitled:

**"A BILL FOR AN ORDINANCE RELATING TO COMMERCIAL
ACTIVITIES AT PUBLIC PARKS,"**

which passed Second Reading and was the subject of a Public Hearing held at the Council meeting of November 10, 2021, reports as follows:

The purpose of Bill 34 (2021), CD1 is to address commercial activities at certain beach parks.

The Director of Parks and Recreation acknowledged that while the amendments are an improvement to Bill 34, the department continues to be concerned about a blanket ban on commercial activity and offered an alternative approach that would allow commercial activity on a limited basis.

At your Committee's meeting on November 18, 2021, two individuals testified in support, eight individuals in opposition, and one individual offered comments on the Bill. Your Committee also received oral testimony in opposition to the Bill from the following organizations: Catch'a Wave LLC; North Shore Surf Girls; Rainbow Watersports; Surf N Sea Inc.; and Hawaii Waves Surf School.

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON **DEC 1 2021**

COMMITTEE REPORT NO. **336**

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Written testimony in support was received from four individuals. Testimony in opposition was received from 51 individuals.

Your Committee also received written testimony in support from Natty Surf School. Written testimony in opposition to the Bill were received from the following institutions, organizations, and governmental agencies: Surf N Sea Haleiwa; the Hawaii Nurses' Association OPEIU Local 50; and the North Shore Chamber of Commerce. Comments were received from the North Shore Surf Girls; Hawaii Waves Surf School; and the Oahu Surfing Experience LLC.

Your Committee considered and approved a proposed posted CD2 version that makes the following amendments:

- A. Adds shore water events (a term which includes surf contests) to the exception to the prohibition on commercial activities at certain North Shore beach parks.
- B. Replaces references to Haleiwa Beach Park with references to the undeveloped portions of Haleiwa Beach Park adjacent to Pua'ena Point.
- C. Adds the following parks to the prohibition on commercial activities: Waiale'e Beach Park, 'Ehukai Beach Park, Pūpūkea Beach Park, Waimea Bay Beach Park, and Kaiaka Bay Beach Park.
- D. Removes the nonsubstantive changes made by the CD1 to the format of the sections on commercial activity at parks.
- E. Makes miscellaneous technical and nonsubstantive amendments.

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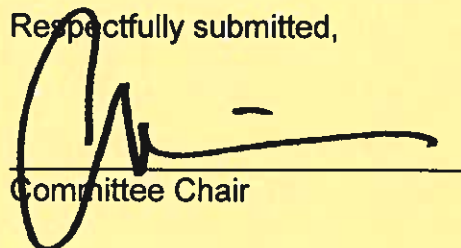
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Your Committee on Parks and Community Services is in accord with the intent and purpose of Bill 34 (2021), CD1, as amended herein, and recommends that it pass third reading in the form attached hereto as Bill 34 (2021), CD2. (Ayes: Fukunaga, Tsuneyoshi, Tulba – 3; Noes: None; Excused: Tupola – 1.)

Respectfully submitted,



Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON DEC 1 2021

COMMITTEE REPORT NO. 336



A BILL FOR AN ORDINANCE

RELATING TO COMMERCIAL ACTIVITIES AT PUBLIC PARKS.

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

SECTION 1. The purpose of this ordinance is to address commercial activities at certain beach parks.

SECTION 2. Section 10-1.2, Revised Ordinances of Honolulu 1990 ("Park rules and regulations"), is amended by amending subsections (h) and (i) to read as follows:

"(h) Commercial activities, including recreational stops by commercial tour companies, are not allowed at any time at Kailua Beach Park and Kalama Beach Park, except as otherwise provided in this chapter for commercial filming activities.

Commercial activities, including recreational stops by commercial tour companies, but excluding commercial filming activities and shore water events, are not allowed at any time at Waiale'e Beach Park, Sunset Beach Park, 'Ehukai Beach Park, Pūpūkea Beach Park, Waimea Bay Beach Park, Haleiwa Ali'i Beach Park, Kaiaka Bay Beach Park, and the undeveloped portions of Haleiwa Beach Park adjacent to Pua'ena Point.

Recreational stops by commercial tour companies are not allowed at:

- (1) Waimanalo Beach Park, Kaiona Beach Park, Kaupo Beach Park, Makapuu Beach Park, and Bellows Field Beach Park at any time; and
 - (2) ~~[Waimanalo Bay Beach Park]~~ Hūnānāniho from 6:30 p.m. on Fridays through 6:30 a.m. on Mondays and on all state and federal holidays.
- (i) Commercial activities, including recreational stops by commercial tour companies, are not allowed at any time at city owned or operated beach rights-of-way and easements from Lanikai to Kapoho Point (Castle Point).

Commercial activities, including recreational stops by commercial tour companies, but excluding commercial filming activities and shore water events, are not allowed at any time at city-owned or -operated beach rights-of-way and easements from Sunset Point to Kaiaka Point.



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Recreational stops by commercial tour companies are not allowed at any time at ~~[city-owned or -operated]~~ city-owned or -operated beach rights-of-way and easements from Makapuu Point to and including ~~[Waimanalo Bay Beach Park,]~~ Hūnānāniho, including the ~~[Waimanalo Bay Beach Park]~~ Hūnānāniho access gate on Aloiloi Street."

SECTION 3. Section 10-1.3, Revised Ordinances of Honolulu 1990 ("Permits"), as amended by Ordinance 20-42 and Ordinance 21-8, is amended by amending subsection (a) to read as follows:

"(a) Required. Any person using the recreational and other areas and facilities under the control, maintenance, management, and operation of the department of parks and recreation must first obtain a permit from the department for the following uses:

- (1) Picnic groups, consisting of 50 or more persons.
- (2) Camping.
- (3) Sports activities, including but not limited to professional athletic contests, tournaments, or demonstration events, and professional surfing contests conducted by a league, organization, association, group, or individual.

A sports activity that requires a permit as provided under this section is subject to the following restrictions, in addition to any other conditions imposed by the rules adopted by the director:

- (A) Gender Equity. The department of parks and recreation shall not give preferential treatment to requests for permits for male activities over requests for permits for female activities. This requirement does not apply if:
 - (i) The sports activity is limited to one gender;
 - (ii) The rules governing a particular sports activity expressly prohibit the participation of a particular gender; and
 - (iii) Permits are made available on an equal basis for a similar activity with participants of another gender or to participants of all genders.



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- (B) Issuance Standards for Permits. The department of parks and recreation shall uniformly treat each application, based upon the facts presented, free from improper or inappropriate considerations and from unfair discrimination and shall exercise no other discretion over the issuance of a permit under this section, except as provided in this section and in the departmental rules.
- (C) Review. Upon the department's refusal to issue a permit, the applicant for the permit is entitled to request a hearing before the director of parks and recreation or a hearings officer appointed by the director to be held within 30 days after the date of the refusal. The hearing will be subject to HRS Chapter 91. In the review, the department's decision will be upheld in the absence of a finding of abuse of discretion.
- (4) Recreational activities, including nonprofit fundraising activities, sponsored by community organizations, associations, groups, or individuals.
- (5) Expressive Activities.
 - (A) Expressive activities held at Ala Moana Regional Park or in the following areas of Kapiolani Regional Park require a permit when the expressive activity involves 150 or more persons[-] :
 - (i) The triangle area fronting the Honolulu Zoo bordered by Kapahulu Avenue and Monsarrat Avenue, but excluding the Honolulu Zoo;
 - (ii) The area within Kapiolani Regional Park bordered by Monsarrat Avenue, Paki Avenue, Poni Moi Road, and Kalakaua Avenue;
 - (iii) The Waikiki playground area bordered by Monsarrat Avenue, Leahi Avenue, and Paki Avenue, generally rectangular in shape;
 - (iv) The Leahi area bordered by Leahi Avenue, Noela Street, and Paki Avenue, generally rectangular in shape; or
 - (v) The archery range area bordered by Paki Avenue and Poni Moi Road, generally rectangular in shape.



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- (B) For all other public parks, and areas of Kapiolani Regional Park outside of the areas specified in Section 10-1.3(a)(5)(A), a permit is required when the expressive activity involves 75 or more persons.
- (C) This subdivision does not apply if the expressive activity is due to a spontaneous event occasioned by news or affairs coming into public knowledge within 48 hours of such expressive activity, in which case the organizer must provide written notice to the city as soon as practicable prior to such expressive activity.
- (6) Meetings or gatherings or other similar activity other than expressive activities held by organizations, associations, or groups.
- (7) Nonrecreational, public service activities, meetings, and gatherings other than expressive activities held by organizations, communities, or groups.
- (8) Right of entry into parks for installation of utilities or construction work.
- (9) The playing of musical instruments as solo or two or more instruments that fall within the standards described in paragraphs (A), (B), and (C):
 - (A) Musical instruments that are limited to two octaves or less, including but not limited to the following musical instruments:
 - (i) Tuba;
 - (ii) Tympani;
 - (iii) Maracas;
 - (iv) Uliuli;
 - (v) Castanets;
 - (vi) Tambourine; or
 - (vii) Percussion instruments in which a human hand or drumsticks are used to create sounds therefrom.
 - (B) Musical instruments that when played do not exceed the sound pressure level established in Section 10-1.2(b)(8).



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- (C) Musical instruments that are used or played continuously without a regular hourly break of 30 minutes, or for more than six hours within a day.
- (D) The use or the playing of a musical instrument that requires a permit as provided under this section is subject to the following restrictions, in addition to any other conditions imposed by the rules adopted by the director; provided that the restrictions do not apply to the playing of musical instruments in conjunction with expressive activities:
 - (i) **Issuance Standards for Permits.** The department of parks and recreation shall uniformly treat each application, based upon the facts presented, free from improper or inappropriate considerations and from unfair discrimination and shall exercise no other discretion over the issuance of a permit under this section, except as provided in this section and in the departmental rules.
 - (ii) **Judicial Review.** Upon the department's refusal to issue a permit, the applicant for such permit is entitled to a review by the circuit court within 30 days after the date of the refusal. In the review, the department's decision will be upheld in the absence of a judicial finding of abuse of discretion.
 - (iii) **Restrictions.** The use or the playing of a musical instrument that requires a permit as provided hereunder is subject to the following restrictions, in addition to any other conditions imposed by the rules adopted by the director:
 - (aa) **Time:** Only between the hours of 9:00 a.m. and 6:00 p.m. daily;
 - (bb) **Place:** The playing of such instruments must be restricted to a facility especially constructed for such purpose, such as the bandstand at Kapiolani Regional Park or other areas within the park that are clearly designated in the permit; and



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- (cc) Manner: During the hours mentioned in clause (aa) of this subparagraph, every half-hour of playing period must immediately be followed by a 15-minute break or every one hour of playing period must immediately be followed by a half-hour break; provided that at no time may there be any continuous playing exceeding an hour.
 - (iv) Duration of Permit. The duration of a permit issued pursuant to this subdivision cannot exceed one month.
- (10) Hang gliding.
- (11) Commercial activities; provided that the proposed commercial activities under the permit are consistent with the use of the park under consideration, subject to reasonable limitations on the size of the groups, and the time and area within which the event is permitted, and subject to department of parks and recreation rules and regulations regarding the solicitation of business, advertising, and commercial promotional activities.

No permit may be issued for commercial activities, including permits for recreational stops by commercial tour companies, at Kailua Beach Park and Kalama Beach Park, except as otherwise provided in this chapter for commercial filming activities.

No permit may be issued for commercial activities, including permits for recreational stops by commercial tour companies, but excluding permits for commercial filming activities and permits for shore water events, at Waiale'e Beach Park, Sunset Beach Park, 'Ehukai Beach Park, Pūpūkea Beach Park, Waimea Bay Beach Park, Haleiwa Ali'i Beach Park, Kaiaka Bay Beach Park, and the undeveloped portions of Haleiwa Beach Park adjacent to Pua'ena Point; and city-owned or -operated beach rights-of-way and easements from Sunset Point to Kaiaka Point.

No permit may be issued for recreational stops by commercial tour companies at:

- (A) Waimanalo Beach Park, Kaiona Beach Park, Kaupo Beach Park, Makapuu Beach Park, and Bellows Field Beach Park; and



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- (B) ~~[Waimanalo Bay Beach Park]~~ Hūnānāniho from 6:30 p.m. on Fridays through 6:30 a.m. on Mondays, and on all state and federal holidays; provided that no more than five permits may be issued for recreational stops by commercial tour companies at ~~[Waimanalo Bay Beach Park,]~~ Hūnānāniho, and such permits may only be issued to commercial tour companies for recreational stops by tour vans or vehicles that seat no more than 15 passengers.

- (12) Constructing, utilizing, placing, occupying, or in any other manner, situating any tent."

SECTION 4. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.



CITY COUNCIL

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ORDINANCE _____

BILL 34 (2021), CD2

A BILL FOR AN ORDINANCE

SECTION 5. This ordinance takes effect upon its approval; provided that any permits allowing commercial activity to take place at Waiale'e Beach Park, Sunset Beach Park, 'Ehukai Beach Park, Pūpūkea Beach Park, Waimea Bay Beach Park, Haleiwa Ali'i Beach Park, Kaiaka Bay Beach Park, and the undeveloped portions of Haleiwa Beach Park adjacent to Pua'ena Point, or any City- owned or -operated beach rights-of-way or easements from Sunset Point to Kaiaka Point, that were issued prior to the effective date of this ordinance shall continue to be valid until the permits expire.

INTRODUCED BY:

Heidi Tsuneyoshi

DATE OF INTRODUCTION:

August 5, 2021

Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu