

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
March 3, 2022

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

Mr. Chair:

Your Committee on Parks and Community Services, which considered Bill 38 (2021), CD1, entitled:

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

which passed second reading and public hearing at the December 1, 2021 Council meeting, reports as follows:

The purpose of Bill 38 (2021), CD1 is to address commercial activities at certain beach parks.

Director Laura Thielen of the Department of Parks and Recreation testified that the administration prefers an island-wide approach to address commercial activities at city beaches and parks in order to prevent confusion among park and beach users and aid with enforcement.

Your Committee has prepared a CD2 version of the Bill that makes the following amendments:

- A. Corrects the spelling of "Hawai'i," "O'ahu," "Hale'iwa," "Makapu'u," "Kaupō," and "Waimānalo" to use Hawaiian language diacritical marks.
- B. Removes exemptions for still photography and special event videography in the prohibition of commercial activities at Waimānalo area parks.

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HONOLULU, HAWAII

ADOPTED ON

MAR 16 2022

COMMITTEE REPORT NO.

55

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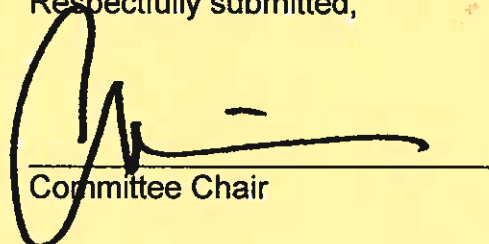
- C. Amends the definition of "Commercial activity" in Section 10-1.1, ROH, to update the name change of "Waimanalo Bay Beach Park" to "Hūnānāniho."
- D. Updates amended sections to include recently enacted amendments made by Ordinance 21-34, and incorporates those amendments into the proposed new format to improve clarity.
- E. Makes miscellaneous technical and nonsubstantive amendments.

At your Committee's meeting on Thursday, March 3, 2022, four individuals testified in support and one individual offered comments on the Bill.

Written testimony in support was received from 14 individuals. Testimony in opposition to the Bill was received from one individual and comments were received from one individual.

Your Committee on Parks and Community Services is in accord with the intent and purpose of Bill 38 (2021), CD1, as amended herein, and recommends that it pass third reading in the form attached hereto as Bill 38 (2021), CD2. (Ayes: Fukunaga, Tsuneyoshi, Tulba, Tupola – 4; Noes: None.)

Respectfully submitted,



Committee Chair

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HONOLULU, HAWAII

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55



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 10-1.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definition of "commercial activity" to read as follows:

""Commercial activity" means a use or purpose designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities; the providing of services relating to or connected with trade, traffic or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes. Notwithstanding the foregoing, the following are not considered commercial activities: the use of land for utilities; the use of the premises and facilities for official canoe regattas; the use of the premises and facilities at ~~[Waimanalo Bay Beach Park]~~ Hūnānāniho and ~~[Waimanalo]~~ Waimānalo Beach Park for music festivals, country fairs, farmer's markets, organized youth sports for students ages pre-school through high school, and educational events that are for students ages pre-school through high school and conducted or offered by educational institutions recognized by the State of ~~[Hawaii]~~ Hawai'i department of education; and all activities and programs conducted by the department of parks and recreation and any vendors needed to conduct these activities and programs."

SECTION 3. Section 10-1.2, Revised Ordinances of Honolulu 1990 ("Park rules and regulations"), as amended by Ordinance 21- 34, is amended by amending subsections (h) and (i) to read as follows:

"(h) Commercial activities prohibited at parks.

- (1) Commercial activities, including recreational stops by commercial tour companies, but excluding commercial filming activities that take place from 1:00 p.m. on Saturdays through 6:30 a.m. on Mondays, 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.]~~ at the following parks:



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- (A) Kailua Beach Park; and
- (B) Kalama Beach Park.
- (2) 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.]~~ at the following parks:
 - (A) Waiale'e Beach Park;
 - (B) Sunset Beach Park;
 - (C) 'Ehukai Beach Park;
 - (D) Pūpūkea Beach Park;
 - (E) Waimea Bay Beach Park;
 - (F) Hale'iwa Ali'i Beach Park;
 - (G) Kaiaka Bay Beach Park; and
 - (H) The undeveloped portions of Hale'iwa Beach Park adjacent to Pua'ena Point.
- (3) Commercial activities, including recreational stops by commercial tour companies, but excluding movie or television filming activities permitted under Sections 10-3.2(a)(1) and 10-3.2(a)(2), are not allowed at any time at the following parks:
 - (A) Makapu'u Beach Park;
 - (B) Kaupō Beach Park;
 - (C) Kaiona Beach Park;



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(D) Waimānalo Beach Park;

(E) Hūnānāniho; and

(F) Bellows Field Beach Park.

~~[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) Hūnānāniho from 6:30 p.m. on Fridays through 6:30 a.m. on Mondays and
on all state and federal holidays.]~~

Except for transportation services for commercial activities allowed under
this subdivision, operators of taxicabs, commercial tour carriers, and other
motor carriers regulated by the State Public Utilities Commission under
HRS Chapter 271, who provide transportation services for passengers or
property by motor vehicle, for the purposes of offering, providing,
facilitating, participating in, or engaging in commercial activities, are
prohibited from entering the parks enumerated in this subdivision.

For the purposes of this section, "taxicab" has the same meaning as
defined in Section 12-1.1(b).

- (i) Commercial activities, including recreational stops by commercial tour companies, but excluding movie or television filming activities permitted under Sections 10-3.2(a)(1) and 10-3.2(a)(2), are not allowed at any time at ~~[city-owned or -operated]~~ city-owned or -operated beach rights-of-way and easements from ~~[Lanikai]~~ Makapu'u Point 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.

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



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SECTION 4. Section 10-1.3, Revised Ordinances of Honolulu 1990 ("Permits"), as amended by Ordinance 20-42, Ordinance 21-8, and Ordinance 21-34, 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.
- (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.



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- (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.
 - (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.



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- (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 Waialeʻo Beach Park, Sunset Beach Park, Ehukai Beach Park, Pūpūkea Beach Park, Waimea Bay Beach Park, Haleiwa Aliʻi Beach Park, Kaiaka Bay Beach Park, and the undeveloped portions of Haleiwa Beach Park adjacent to Puaʻona Point; and city owned or operated beach rights-of-way and easements from Sunset Point to Kaiaka Point.~~



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~~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~~

~~(B) 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 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.]~~

No permits may be issued for commercial activities as prohibited by Sections 10-1.2(h) and (i).

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



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SECTION 5. Section 10-3.2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 10-3.2 Commercial filming activities.

(a) The fee charged for a commercial filming activity permit shall be as follows:

Activity	Daily Permit	Monthly Permit	Annual Permit
(1) Movie or television for (i) nonlocal network and cable television and/or major motion picture studios or (ii) national advertising	[\$300.00] <u>\$300</u>	No Monthly Permit	No Annual Permit
(2) Movie or television for (i) nonprofit organizations as defined in ROH Section 29-1.1, (ii) local television and local advertising, (iii) public service, educational or school productions, or (iv) other movie and television productions not described in subdivision (1)	[\$20.00] <u>\$20</u>	No Monthly Permit	No Annual Permit
(3) Still photos/Special event videography	[\$20.00] <u>\$20</u>	[\$100.00] <u>\$100</u>	[\$1,000.00] <u>\$1,000</u>

Provided that the mayor or a city officer or employee designated by the mayor may reduce any daily permit fee if deemed necessary by the mayor or designee to assist the proposed filming activity and it is deemed by the mayor or designee that such activity will feature or promote the State of ~~Hawaii,~~ Hawai'i, island of ~~Oahu,~~ O'ahu, and/or City and County of Honolulu. Such promotions may be through the production directly or via indirect promotions related to the production.

"Special event videography" means the production of motion pictures or videos for private noncommercial use, including motion pictures or videos of weddings, graduations or similar events to be used as family mementos.

(b) The mayor or a city officer or employee designated by the mayor shall determine which fee applies to a particular commercial filming activity permit.

~~[(c) Commercial filming activities at Kailua Beach Park and Kalama Beach Park may take place from 1:00 p.m. on Saturdays through 6:30 a.m. on Mondays, provided all permit requirements are satisfied.]"~~



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SECTION 6. 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.



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SECTION 7. This ordinance takes effect upon its approval; provided that any permits allowing commercial activity to take place at Waimānalo Beach Park, Kaiona Beach Park, Kaupō Beach Park, Makapu'u Beach Park, Bellows Field Beach Park, Hūnānāniho (fka Waimānalo Bay Beach Park), and any city-owned or -operated beach rights-of-way and easements from Makapu'u Point to Kapoho Point (Castle Point) that were issued prior to the effective date of this ordinance shall continue to be valid until the permits expire.

INTRODUCED BY:

Esther Kia'āina

DATE OF INTRODUCTION:

September 17, 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