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DEPARTMENT OF ENTERPRISE SERVICES
GOLF COURSE DIVISION * HONOLULU ZOO * NEAL S. BLAISDELL CENTER
TOM MOFFATT WAIKIKI SHELL

CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR

TRACY S. KUBOTA
ACTING DIRECTOR

June 23, 2023

The Honorable Tommy Waters
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Waters and Councilmembers:

SUBJECT: Bill Relating to Concessions on Public Property

Attached for your review and appropriate action is a bill relating to concessions on public property.

This bill amends Revised Ordinances of Honolulu 2021 (ROH), Chapter 38, Articles 3 and 8, to include pertinent portions of Hawaii Revised Statutes (HRS) Chapter 102. HRS Chapter 102 was amended by Act 163, Session Laws of Hawaii 2022. Chapter 102 was revised to increase the maximum term of a concession contract from 15 years to 25 years and to allow for award to responsible offerors whose proposals are most advantageous for certain parks concessions, including those relating to beach and ocean-related services and those within the zoo, botanic gardens, or county parks designated by the park's director as environmentally, culturally, historically or operationally unique. Additionally, this bill incorporates portions of HRS § 102-2 that were not previously incorporated into the ROH.

The proposed amendments will conform ROH Chapter 38, the City's Lease and Rental of City Real Property ordinance, with the HRS Chapter 102. Such amendments will provide the City with the ability to award a longer term for concessions and the option to use the sealed bid or proposal method, as appropriate, to solicit for

concessions for certain types of concessions and in certain City parks. The amendments also will provide the City with the ability to use the same, existing exceptions to the bid requirements of HRS Chapter 102 as the State. Providing such flexibility in term and award may also help to attract and retain successful vendors.

Should you have any questions, please contact me at 808-768-5415.

Sincerely,

Tracy S. Kubota
Acting Director

Attachment

APPROVED:

Michael D. Formby
Managing Director

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

TO AMEND CHAPTER 38, ARTICLES 3 AND 8, REVISED ORDINANCES OF HONOLULU, 2021, AS AMENDED RELATING TO CONCESSIONS.

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

SECTION 1. Purpose. The purpose of this bill is to amend Section 38 of the Revised Ordinances of Honolulu 2021 to incorporate amendments made by Act 163, Session Laws of Hawaii 2022, to Hawaii Revised Statutes Chapter 102, Concessions on Public Property, and other exemption provisions of Hawaii Revised Statutes Chapter 102 not currently in the Revised Ordinances of Honolulu 2021.

SECTION 2. Section 38-3.2, Revised Ordinances of Honolulu 2021, is amended as follows:

§ 38-3.2 Bidding not required--Concessions.

The director may award concessions on terms and conditions approved by the corporation counsel as to form and legality without calling for public bids, when:

(1) *Activities without charge.* Concessions or concession spaces that are set aside without any charge for events, productions, attractions, or activities including the exhibition and sale of handcrafts, works of art, produce, or products of a nonprofit organization, as defined in Article 1, or its members as long as the sale of any craft items, works of art, produce, or products are made by the member of the organization who actually makes, creates, grows, or gathers the items being sold, and as long as all net profits earned by the nonprofit organization from the concession are to be applied to the expenses of the organization incurred in connection with events or activities directly related to the purpose for which it has been organized;

(2) *Periods of two days or less.* Concessions or concession spaces that are set aside for a period or periods of time not to exceed two successive days without any charge:

(A) For the exhibition and sale of works of art by artists who actually produce the works of art being exhibited and sold;

(B) For the exhibition and sale of handcrafted items being exhibited and sold; and

(C) For the display and sale of fruits and vegetables, seafoods, and prepared but not manufactured food products by the person who actually grows or gathers the fruits and vegetables, catches the seafoods, or prepares the food products being displayed and sold;

(3) *Handicapped or blind persons.* Concessions or concession spaces that are set aside for the use of handicapped or blind persons or any nonprofit organization primarily engaged in physical rehabilitative programs:

(A) *Nonprofit private corporations.* The word "persons" contained herein shall include a nonprofit private corporation which has been exempted from taxation as prescribed under § 501 of the Internal Revenue Code of 1986, as amended, and its articles of incorporation or association shall have a provision contained therein that the primary objective of the corporation is to service, aid or abet, or assist the handicapped or blind persons.

(B) *No rent, except for maintenance cost.* Notwithstanding any provisions to the contrary contained herein, the director shall assess no rent for leasing or renting of concessions or concession space to handicapped or blind persons, including any vending machines assigned to such vendors; provided that for real property, including improvements thereon, the director shall assess the cost of maintenance of that portion of such real property leased or rented to handicapped or blind persons;

(4) *Governmental subdivisions.* Concessions or concession spaces that are set aside for the use of any political or governmental subdivision of the federal, state, or county governments;

(5) *Nonprofit beachboy concessions.* Concessions or concession spaces that are set aside for beachboys licensed by the State department of transportation;

(A) *Policy.* The council finds that Hawaiian beachboys are rooted in the State's historical and cultural traditions and that there is a need for the city to provide for concessions available to licensed beachboys on beach property under the jurisdiction of the city.

(B) *Definition.* "Nonprofit beachboy concession" is the grant to a qualified beachboy association of the privilege to conduct operations essentially retail in nature, involving the rental of surfboards, bodyboards, or canoes. A qualified beachboy association is an association which is dedicated to the

preservation of the beachboy tradition and is incorporated as a nonprofit corporation in accordance with State law.

(C) *Special conditions to be met when providing beachboy concessions on beach park property under the jurisdiction of the city.* The following special conditions shall govern the award of nonprofit beachboy concessions on beach park property under the jurisdiction of the city:

(i) The department of parks and recreation shall designate specific sites on the beach for each beachboy concession and shall locate the sites so as not to impede access to and use of the beach by the public;

(ii) A beachboy concession may offer to provide instruction for the use of rental equipment incidental to the rental of the equipment, and may offer the sale of canoe rides incidental to the rental of canoes; and

(iii) The department of parks and recreation shall establish policies to ensure that the use of the nonprofit beachboy concessions is restricted to beachboys who are licensed pursuant to Hawaii Administrative Rules Chapter 82, Title 19, (department of transportation), and that such concessions are operated to provide equal opportunity for use by all licensed beachboys.

(D) *Fees and charges for beachboy concessions.* The department of parks and recreation is authorized to set the fees charged by the beachboy concessions.

(E) *Rules.* The director of parks and recreation shall adopt rules pursuant to HRS Chapter 91 necessary for the purposes of this subsection;

(6) *Beach and ocean-related recreational services.* Concessions or concession spaces that provide for beach or ocean-related recreational services; provided that the concessions are awarded to the responsible offeror whose proposal is determined to be most advantageous, taking into consideration prices and evaluation factors set forth in the request for proposals;

~~(6)~~ (7) *Nonprofit zoo, cultural park and botanical garden concessions.* Concessions or concession space at city zoos, [~~cultural parks or~~] botanical gardens, or parks that are designated by the director of parks and recreation, in the director's sole discretion, as environmentally, culturally, historically, or operationally unique and are set aside for use by support groups that are incorporated as nonprofit

corporations in accordance with State law, for the purpose of supporting city aims and goals for the zoo, botanical gardens, and [~~cultural~~] designated parks; provided that each support group shall annually submit to the director of parks and recreation and the council an audited financial statement of the revenues and expenditures of that support group;

(8) *Zoo, botanical garden, and unique park concessions.* Concessions or concession spaces that are located within or at city zoos, botanical gardens, or city parks that are designated by the director of parks and recreation, in the director's sole discretion, as environmentally, culturally, historically, or operationally unique; provided that the concessions are awarded to the responsible offeror whose proposal is determined to be the most advantageous, taking into consideration prices and evaluation factors set forth in the request for proposals;

~~(7)~~ (9) [~~Coin-Operated~~] *Vending machines.* Concession spaces that are leased or rented for [~~coin-operated~~] vending machines except [~~coin-operated~~] insurance vending machines;

~~(8)~~ (10)*Public pay telephones.* Concession spaces that are leased or rented for public pay telephones;

~~(10)~~ (11) *Parking stalls for shared micromobility vehicles.* Concessions or concession spaces, including parking stalls, set aside for shared micromobility vehicle businesses;

~~(9)~~ (12)*Hans L'Orange baseball facility.* Concessions or concession spaces at the Hans L'Orange baseball facility that are set aside without charge to the permittee of a professional sports activity; provided that the period of use of such concessions or concession space shall be limited to the term of the permit. For the purposes of this section, the following definitions apply unless the context clearly indicates or requires a different meaning.

Permittee. The promoter, sponsor, exhibitor, league, or other person who obtains a permit for the purposes of conducting a professional sports activity at a professional sports facility for which admission fees are charged.

Professional Sports Activity. A game, event, exhibition, or activity of a recognized sport for which admission fees are charged and the participants in which receive compensation in return for participation in the sport.

Hans L'Orange Baseball Facility. The playing field, bleachers, stands, and other areas of the facility enclosed by a fence.

(13) *Lei vendors*. Concessions or concession spaces for the purposes of the sales of lei and lei-related products;

(14) *Automated teller machines*. Concession spaces for the purposes of placement and operation of automated teller machines;

(15) *Permits revocable with notice of thirty days or less*. Concessions or concession spaces that are contracted through permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;

(16) *Sole source concessions*. Concessions that furnish goods or services for which there is only one source, as determined by the finance director in writing; provided, that the written determination shall be included in the contract file; and

(17) *Concessions without charge*. Concessions or concession spaces set aside without any charge.

SECTION 4. Section 38-8.1, Revised Ordinances of Honolulu 2021, is amended as follows:

§ 38-8.1 Awarding of concessions.

(a) Concessions in the facilities shall be awarded as provided by law. The term of any concession shall not exceed a period of twenty-five [~~five~~] years.

(b) The sale and consumption of alcoholic beverages shall be in conformity with applicable laws. However, the sale and consumption of alcoholic beverages shall be prohibited if the tenant of the facility in which such concession is located objects to such sale and consumption.

SECTION 5. 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 bracketed and stricken material, or the underscoring.

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance shall take effect upon approval.

INTRODUCED BY:

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_____

DATE OF INTRODUCTION: _____

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_____ _____

Honolulu, Hawaii Councilmembers

APPROVED AS TO FORM AND LEGALITY:

_____

Deputy Corporation Counsel

APPROVED this _____day of _____, 20 _____.

_____

RICK BLANGIARDI, Mayor
City and County of Honolulu