

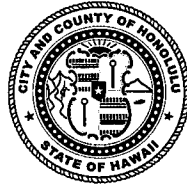
DEPARTMENT OF ENTERPRISE SERVICES

KA 'OIHANA LAWELAWE LAWEHANA

GOLF COURSE DIVISION * HONOLULU ZOO * NEAL S. BLAISDELL CENTER * TOM MOFFATT WAIKĪKĪ SHELL

CITY AND COUNTY OF HONOLULU

777 WARD AVENUE • HONOLULU, HAWAII 96814
PHONE: (808) 768-5400 • FAX: (808) 768-5433 • WEBSITE: honolulu.gov/des



RICK BLANGIARDI
MAYOR
MEIA

DITA HOLIFIELD
DIRECTOR
PO'O

TRACY S. KUBOTA
DEPUTY DIRECTOR
PO'O KŪIKAWĀ

November 14, 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.

As part of a settlement agreement to resolve claims against the City in *Palekaiko Beachboys Club, Inc. and Thomas John Copp v. City and County of Honolulu*, Civil Case No. 1:21-CV-00500 DKW-KJM, United States District Court, District Of Hawaii, the City agreed to submit a bill to City Council Chair on or before November 22, 2023 for introduction by the Honolulu City Council for certain amendments to Revised Ordinances of Honolulu 2021 (ROH) Chapter 38, Article 3.2(5). Among other issues, this lawsuit involved a First Amendment claim against the City relating to the use of revocable permits for the nonprofit beachboy concession stand.

To meet the terms of the settlement agreement, this bill amends ROH Chapter 38, Article 3.2(5), to:

- (1) Omit the requirements that beachboys must be licensed or certified by the State of Hawaii by deleting references to the licensing of beachboys contained in ROH § 38-3.2(5), as the State has recently repealed its licensing requirements for Waikiki beachboys in Hawaii Administrative Rules ("HAR") § 13-251, Subchapters 1, 2, 3, and 7, effective December 21, 2022;
- (2) Amend the references to the appropriate City department responsible for acts described in ROH § 38-3.2(5), to replace "department of parks and

DEPT. COM. 795

The Honorable Tommy Waters
Chair and Presiding Officer
and Members
November 14, 2023
Page 2

recreation” with “department of enterprise services”, as the department of enterprise services has jurisdiction over and responsibility for such concessions;

- (3) Amend ROH 38-3.2(5)(C)(i) to provide that the location of the nonprofit beachboy concession shall be near the location of Duke Kahanamoku Statue, to ensure placement of the nonprofit stand in a high traffic area; and
- (4) Amend ROH § 38-3.2(5)(B) to revise the definition of a qualified beachboy association so that it must be a 501 tax exempt entity, consistent with other portions regarding nonprofits in ROH § 38-3.2.

The proposed amendments ensure the bidding exception for nonprofit beachboy concessions continues to exist, after the State’s repeal of beachboy licensing, effective December 21, 2022. Recognizing the historical and cultural significance of the beachboys in Waikiki, the amendments will help ensure the nonprofit beachboy concession will be located in a central location at Kuhio Beach Park. The amendments will also give the Department of Enterprise Services the authority required to pass administrative rules and take other actions necessary as the department with jurisdiction over and responsibility for such concessions. Finally, for consistency with other portions regarding nonprofits in ROH § 38-3.2, the bill will ensure a qualified beachboy association must be a 501 tax-exempt entity.

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

Sincerely,



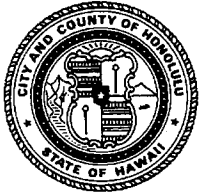
Dita Holifield
Director

Attachment

APPROVED:



Michael D. Formby
Managing Director



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CITY AND COUNTY OF HONOLULU

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: (1) address the repeal of the licensing requirements for beachboys in Hawaii Administrative Rules ("HAR") § 13-251, Subchapters 1, 2, 3, and 7, effective December 21, 2022; (2) transfer authority regarding nonprofit beachboy concessions to the department of enterprise services, as it is the department primarily responsible for the operation of such concessions; (3) further define the nonprofit status of beachboy associations to include tax exempt entities under § 501 of the Internal Revenue Code of 1986, as amended; and (4) prescribe the location of the nonprofit beachboy concession.

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

"Sec. 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;



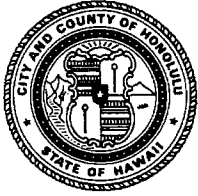
HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (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) *Definition.* For the purposes of this subdivision, "handicapped or blind persons" includes those persons referred to as "blind or visually handicapped persons" in HRS § 102-14.
 - (B) *Nonprofit private corporations.* The word "persons" contained herein includes a nonprofit private corporation that 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 must 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.
 - (C) *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



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

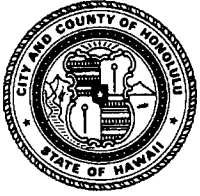
ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

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 that is dedicated to the preservation of the beachboy tradition, [~~and~~] is incorporated as a nonprofit corporation in accordance with State law[~~-,~~], and is exempted from taxation as prescribed under § 501 of the Internal Revenue Code of 1986, as amended.
- (C) *Special conditions to be met when providing nonprofit beachboy concessions on beach park property under the jurisdiction of the city.* The following special conditions 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 the specific site[s] on the beach for [~~each~~] the nonprofit beachboy concession near or around the Duke Kahanamoku Statue, within Parcel Number (TMK) 2-6-001-008-0000, to the extent possible, and shall locate the site[s] so as not to impede access to and use of the beach by the public; however, the location of the nonprofit beachboy concession shall be subject to environmental factors, including, but not limited to, sea level rise, erosion, and beach enlargement, and nothing herein shall require the city to maintain beachboy concession services;
 - (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~~] enterprise services 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]~~ a qualified beachboy association as defined in subsection (5)(B) above.



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (D) *Fees and charges for beachboy concessions.* The department of [~~parks and recreation~~] enterprise services is authorized to set the fees charged by the beachboy concessions.
- (E) *Rules.* The director of [~~parks and recreation~~] enterprise services shall adopt rules pursuant to HRS Chapter 91 necessary for the purposes of this subdivision;
- (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;
- (7) *Nonprofit zoo, botanical garden, and unique park concessions.* Concessions or concession space at city zoos, 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 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.
- (9) *Vending machines.* Concession spaces that are leased or rented for vending machines except insurance vending machines;
- (10) *Public pay telephones.* Concession spaces that are leased or rented for public pay telephones;
- (11) *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



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

professional sports activity; provided that the period of use of such concessions or concession space is limited to the term of the permit. For the purposes of this subdivision, the following definitions apply unless the context clearly indicates or requires a different meaning.

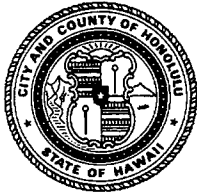
Permittee. The promoter, sponsor, exhibitor, league, or other person who obtains a permit for the purposes of conducting a professional sports activity at a professional sports facility for which admission fees are charged.

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

- (12) *Parking stalls for shared micromobility vehicles.* Concessions or concession spaces, including parking stalls, set aside for shared micromobility vehicle businesses. For the purposes of this subdivision, "shared micromobility vehicle business" has the same meaning as defined in § 15-31.1;
- (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 30 days or less.* Concessions or concession spaces that are contracted through permits revocable on notice of 30 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 director in writing; provided that the written determination is included in the contract file; or
- (17) *Concessions without charge.* Concessions or concession spaces set aside without any charge."

SECTION 3. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this Ordinance for inclusion in



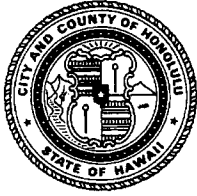
HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the bracketed and stricken material, or the underscoring.



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance shall take effect upon approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

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