

**PRESENTATION BY THE DEPARTMENT OF
ENTERPRISE SERVICES ON THE COUNCIL FOR
NATIVE HAWAIIAN ADVANCEMENTS KILOHANA
HULA SHOW
Testimony**

MISC. COMM. 134

KAPIOLANI PARK TRUSTEES (KPT)

KAPIOLANI PARK TRUSTEES (KPT) Meeting

Meeting Date: Apr 2, 2024 @ 11:00 AM

Support: 5

Oppose: 1

I wish to comment: 1

Name: Alethea Rebman	Email: KapiolaniParkKPPS@gmail.com	Zip: 96815
Representing: Kapiolani Park Preservation Society	Position: I wish to comment	Submitted: Apr 1, 2024 @ 12:38 PM

Name: Shirley Swinney	Email: sskswinney@yahoo.com	Zip: 96707
Representing: Self	Position: Support	Submitted: Apr 1, 2024 @ 01:08 PM

Testimony:

Aloha e Chair Delos Santos and Council Members:

My name is Shirley Swinney and I am in strong support of CNHA's Kilohana Hula Show at the Amphitheater in the Waikiki Shell (Kapiolani Park).

Over its history, Kapiolani Park has been a gathering place welcoming people to recreate, entertain themselves and practice their sport. And for the first time in the history of Kapiolani Park, a Hawaiian entity has stepped forward to share Hawaii's cultural heritage. Council for Native Hawaiian Advancement's Kilohana Hula Show comes to the Amphitheater in the Waikiki Shell with renewed vitality for our cultural heritage through mele, hula and mo'olelo. Hulo, hulo to CNHA! Who better to share the story than those who call Hawaii home. Who better to convey the sense of aloha for people and place than those who practice and live it. I strongly support CNHA's Kilohana Hula Show and its presence at Kapiolani Park as a cultural place holder. It is our collective kuleana to render support in the effort to preserve cultural heritage and I humbly suggest doing this through fees and government funding and more collaborations with stakeholders, as well as, developers and the tourism sector.

Mahalo for the opportunity to testify.

Shirley Swinney

Name: Donna Ching	Email: donnaalching@icloud.com	Zip: 96822
Representing: Kapiolani Park Preservation Society	Position: Oppose	Submitted: Apr 1, 2024 @ 02:56 PM

Name: Kuhio Lewis	Email: kuhio@hawaiiancouncil.org	Zip: 96707
Representing: Council for Native Hawaiian Advancement	Position: Support	Submitted: Apr 1, 2024 @ 08:40 PM

Name: Angela Melody Young	Email: alohadivinedesign@gmail.com	Zip: 96817
Representing: CARES	Position: Support	Submitted: Apr 1, 2024 @ 11:03 PM

Testimony:

CARES testifies in strong support.

Name: Tyler Iokepa Gomes	Email: tgomes01@gmail.com	Zip: 96734
Representing: Self	Position: Support	Submitted: Apr 2, 2024 @ 09:37 AM

Testimony:

I support the Council for Native Hawaiian Advancement's Kilohana Hula Show.

Name: Hailama V.K.K. Farden	Email: hailamafarden@gmail.com	Zip: 96822
Representing: Self	Position: Support	Submitted: Apr 2, 2024 @ 10:43 AM

Kapiolani Park Preservation Society

Re: Kapiolani Park Trustee Meeting on April 2, 2024

Aloha Chair Santos-Tam and Trustees:

The Kapi'olani Park Preservation Society ("KPPS") strongly objects to the proposed rental of a portion of Kapi'olani Park (the "Park") by the City and County of Honolulu (the "City") to the Council for Native Hawaiian Advancement ("CNHA"). The Park is subject to a long established charitable trust that prohibits the leasing of any part of the trust property and the proposed lease is a breach of trust¹.

The Waikiki Shell is located within Kapi'olani Park and subject to the terms of its Trust, which you are charged with enforcing above all other interests. Kapiolani Park was transferred to the people on specific terms, and the City is not allowed to lease out the Shell, period. Our Hawaii Supreme Court said so in clear terms.

In addition, the effectuating court orders specifically and clearly said, "That the Waikiki Shell is a facility appropriate to a park, and its use for short-term entertainment events of the type currently being conducted is not a violation of the Trust." We can assure you that the allowable events referenced there were not even close to a commercial luau having exclusive use on set nights with the City having landlord obligations. Think concerts, not setting up a business inside the Shell and Park, much less giving parking rights to a business entity.

KPPS bases this belief upon the Hawaii Supreme Court *Kapi'olani Park Preservation Society v. City and County of Honolulu et. al* 751 P.2d 1022 (1988) in which the high court held that a similar transaction represented a lease of part of Kapi'olani Park (although it was not titled as one) and that such a lease agreement was beyond the powers of the City as a Park Trustee to grant, thus the City was in breach of the Trust. The Supreme Court also held that the attorney general as *parens patriae*, regardless of their legal opinion as to the correct answer to the controversy, should bring matters to the courts when the law on such matters is, at least, subject to reasonable doubt.

If the City wishes to pursue this, the only legal option is to take the question to the Attorney General's office, and proceed from there. We do not believe there is reasonable doubt that this does not violate the terms of the Trust, but it is not the City's kuleana to make this decision.

¹ See Kapi'olani Park Preservation Society v. City and County of Honolulu et. al, 751 P.2d 1022 (1988); City and County of Honolulu v. Warren Price, S.P. No. 89-0015 (June 28, 1991) (Amended Findings of Fact and Conclusions of Law and Order),

April 1, 2024

Testimony for Kapiolani Park Trustee Meeting, April 2, 2024

Aloha Chair Santos-Tam and Trustees:

I remind all of you of your duty to step out of your City Councilmember roles and put on your Trustee hats as you consider issues concerning Kapiolani Park. A serious conflict of interest is created by your fiduciary responsibilities to the City/DPR/DES and your kuleana as stewards of the trust. In matters concerning Kapiolani Park, the interests of the City can never take precedence over your duty to uphold the trust. Straddling between the two is serving neither.

Kapiolani Park Preservation Society (KPPS) strongly objects to renting the Shell to CNHA for commercial activities including a paid luau and marketplace. This is not a matter of concept likeability as it is of legality. The law concerning this charitable land trust is very clear. The courts have affirmed that "free and open access for all" prohibits allowing the exclusive use of park land especially for revenue generating commercial use.

The Waikiki Shell is located within Kapiolani Park and subject to the terms of its Trust, which you are charged with enforcing above all other interests. Kapiolani Park was transferred to the people on specific terms, and the City is not allowed to lease out any parts of the trust including Shell. The Hawaii Supreme Court 1988 ruling on this is clear. Allowable short term events such as concerts are NOT equivalent to CNHA's proposed commercial luau and marketplace which will have exclusive use on set nights with the City as landlord. The Hawaii Supreme Court in Kapiolani Park Preservation Society v. City and County of Honolulu et. al 751 P.2d 1022 (1988) made it clear that the City may not enter into leases without breaching the trust.

Furthermore, the Supreme Court held that the attorney general, as parens patriae, should bring matters to the courts when the law on such matters is, at least, subject to reasonable doubt. We do not believe the AG will find a reasonable doubt that CNHA is indeed striving for an illegal lease. But in any case, neither the City nor trustees have the authority to make a decision about CNHA's proposed enterprise.

It is your collective responsibility to stop CHNA/DES's apparent attempt to sidestep trust law, the attorney general and KPPS expert opinion. Thank you for your faithful duty to steward the charitable public land trust you are entrusted with.

Donna L. Ching

Kapiolani Park Preservation Society Director

Honolulu City Council – Kapiolani Park Trustees Meeting
Presentation by the Department of Enterprise Services on the
Council for Native Hawaiian Advancement's Kilohana Hula Show

RE: Support for and Clarifying Comments Regarding Kilohana Hula Show

April 2, 2024

Aloha Council Members and Trustees of the Kapiolani Park Trust,

On behalf of the Council for Native Hawaiian Advancement ("CNHA"), we welcome the opportunity to clarify our agreement with the City and County of Honolulu, acting by and through the Director of Enterprise Services, as well as to answer questions that you may have about our plans to use the Tom Moffatt Waikiki Shell.

1. CNHA's Plans and Activities

As you know, CNHA operates a Hula Show at the Waikiki Shell to share Hawaiian language, music, and dance with visitors and locals alike. The Hula Show, which has enjoyed great success, features Merrie Monarch winning hālau, cast members from the Old Lahaina Lū'au, and musicians from across the State.

To accompany the Hula Show, CNHA plans to operate an Evening Show at the Waikiki Shell. The Evening Show will feature many of the same performers and will also offer Hawaiian food and drink to guests. CNHA intends to charge an admission fee for the Evening Show; the proceeds of the Evening Show will offset the costs of the daytime Hula Show.

Collectively, the Hula Show and the Evening Show offer an important opportunity for the Native Hawaiian community to tell our own story, presenting a true vision of cultural self-determination in the heart of Waikiki. For too long, visitors have experienced a false and inauthentic "Hawaiian" culture, informed by stereotype and exoticism. CNHA seeks to correct these damaging tropes, providing visitors and locals alike with a culturally appropriate experience grounded in the history, identity, and power of the Native Hawaiian people.

2. CNHA's Agreement with the Department of Enterprise Services

CNHA has entered into an Agreement with the City and County permitting the non-exclusive use of the Waikiki Shell for the limited purposes of a luau and free hula event. The Agreement obligates CNHA to pay fees based on a day-to-day schedule, with the specific amounts dictated by Section 38-7.1, Revised Ordinances of Honolulu. The Agreement is consistent with the City's standard form agreement for use of the Waikiki Shell by any performer or promoter. The agreement thus includes provisions for compliance with the City's sound level ordinances, prohibitions on the use of coolers at the event, trash removal, and CNHA's provision of security and emergency medical personnel at the venue. It is, in short, the type of agreement that the City has used for hundreds of other events at the Waikiki Shell.

Significantly, the Agreement does not provide CNHA with exclusive use of the Waikīkī Shell. Rather, CNHA will use the Waikīkī Shell only on selected days and times, without conflicting with other users who tend to use the Shell on Friday and Saturday nights. CNHA's uses are further integrated into the Waikīkī Shell's programming and schedule over the next eight months, with CNHA taking times "off" when other users will use the venue. CNHA has worked closely with the Department of Enterprise Services and will continue to work closely with that Department to ensure that other performers continue to have access to the facility.

3. CNHA's Uses are Consistent with the Park Trust

Vibrant and engaging programming at the Waikīkī Shell is consistent with both the longtime uses of the Waikīkī Shell and the express terms of the Kapiolani Park Trust.

The Hula Show and Evening show evoke the iconic Kodak Hula Show, whose run at the Waikīkī Shell amphitheater spanned six decades. The Waikīkī Shell has always been a venue for cultural exchange, and in particular a place where Hawai'i has shared its music and dance with the world. Significantly, uses of the Waikīkī Shell have never been limited to free events. To the contrary, performers have regularly and consistently charged for admission.

These uses—including the use of admission fees—are expressly permitted under the terms of the Kapiolani Park Trust as memorialized by Act 53 (1896), which allows the City to "grant and terminate franchises and permits for public entertainment," as well as to "authorize the proprietors or managers of any special entertainment or exhibition which may be permitted within the park's limits, to charge and collect fees for admission to such entertainment or exhibition."

4. CNHA's Uses Are Not an Impermissible "Lease."

We understand that opponents of CNHA have alleged that certain of its activities constitute an impermissible "lease" under section 6 of Act 53 and the Hawaii Supreme Court's 1988 Kapiolani Park Preservation Society decision. In that decision, the Court held that the City's conveyance of a parcel land to a developer to build and operate a Burger King restaurant in Kapiolani Park violated the terms of the Park Trust. The present situation, however, is nothing like the Burger King case.

The Court's decision hinged on its conclusion that Burger King had obtained a "lease" of land, which the Trust does not permit. But the Trust does not forbid a "license," which, as recognized in the Burger King case, is an "authority to do a particular act or series of acts **upon another's land** without possessing any estate therein."

CNHA's agreement with the City is the very definition of "license," because it simply obtained the authority to hold events upon the Trust's land without possessing any estate in the land. CNHA received only a non-exclusive right to use the Waikīkī Shell facilities rather than an interest in the land itself. While the developer in the Burger King case, would have held the rights to construct and exclusively operate a restaurant, CNHA's rights are limited to use of the property during certain hours and for certain uses.

Even during CNHA's periods of use, its rights to the property are not exclusive. Indeed, in the license agreement, CNHA expressly recognized that other events may be scheduled at the facility during the same dates and times of its activities. CNHA also acknowledged in the agreement that the City (and not CNHA) has the right to undertake construction at the facility, and CNHA further assumes the risk that such construction will interfere with its events. Indeed, CNHA understands that, later this year, the City intends to undertake a 3-4 month maintenance project which may cause CNHA to alter its plans.

In any event, CNHA would like to emphasize its appreciation of the unique and special nature of the Waikīkī Shell and Kapiolani Park. These lands were once held and used by our Alii, and we recognize both the privilege and responsibility of stewarding these lands. In activating the Waikīkī Shell for an authentic, modern, and ultimately restorative cultural sharing, we look forward to working with your offices and other stakeholders to ensure that the goals of our predecessors can be honored.

Me ka ha'aha'a,

Kūhiō Lewis

Chief Executive Officer, CNHA

Honolulu City Council (Meeting of the Kapiolani Park Trustees)

Wholehearted Support of the Kilohana Hula Show

Aloha Trustees and Honorable Council members

My name is Hailama Farden, and I call Makiki, Oahu, my home. My early years were filled with memories from Kapahulu, where my father and maternal grandparents resided. A significant part of my childhood was spent at Kapiolani Park. I aim to keep this statement brief and to the point. I wish to express my endorsement of the Council for Native Hawaiian Advancement's initiatives to revive Hawaiian culture in the area of Waikīkī known as Kapiolani Park. CNHA hosts a Hula Show at the Waikīkī Shell, showcasing Hawaiian language, music, and dance to both visitors and locals. This successful show features performers from the Merrie Monarch-winning hālau, seasoned dancer and legendary treasures who serve as musicians from throughout the state.

Beyond the Hula Show, CNHA is also organizing an Evening Show at the Waikīkī Shell, featuring not only similar artistic performances but also offering guests the taste of traditional Hawaiian foods. This evening event will require tickets, and the funds raised will directly support the daytime Hula Show.

Such gatherings are crucial for allowing the Native Hawaiian community to convey its story, emphasizing genuine cultural expression at the heart of Waikīkī. The depiction of Hawaiian culture to outsiders has too often been distorted by false narratives and clichés. CNHA is committed to challenging and changing these false impressions by creating experiences that honor and accurately reflect Native Hawaiian culture.

I strongly support CNHA's efforts and the broader mission to present genuine culture through the Kilohana Hula show.

Conversely, while I recognize the intentions of the Kapiolani Preservation Society, their efforts seem lacking in cultural expertise and visible advocacy to preserve the critical cultural heritage of the park. Their impact on cultural preservation and the legacy of Queen Kapiolani, in whose honor the park was named, remains unclear to me. The organization's limited online presence and the absence of engagement opportunities further my reservations about its effectiveness and position to challenge the Kilohana Hula Show work.

I am convinced that the stewardship of our culture, along with the preservation of the park's legacy and heritage, is in safe hands with CNHA, HTA, and the Kilohana Hula show.

Mahalo nui!

A handwritten signature in black ink, appearing to read 'Hailama VKK Farden'. The script is cursive and fluid, with the first name 'Hailama' being more prominent than the last name 'Farden'.

Hailama VKK Farden