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A BILL FOR AN ORDINANCE

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RELATING TO PUBLIC PARKS.

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

SECTION 1. Purpose. The purpose of this ordinance is to regulate expressive activities in public parks.

SECTION 2. Section 10-1.1, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new definition of "expressive activities" to read as follows:

""Expressive activities" means speech or conduct, the principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of political, religious, philosophical, or ideological opinions, views, or ideas and for which no fee is charged or required as a condition of participation in or attendance at such activity. Expressive activity generally would not include sports events such as marathons, fundraising events, beauty contests, commercial events, cultural celebrations or other events the principal purpose of which is entertainment."

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

**"Sec. 10-1.3 Permits.**

- (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 shall 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 conducted by [either] a league, organization, association, group or individual;
  - (4) Recreational activities, including nonprofit fundraising activities, sponsored by community organizations, associations, groups or individuals;



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(5) Expressive Activities.

(A) Expressive activities held at Ala Moana Regional Park or in the following areas of Kapiolani 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 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 shall be required when the expressive activity involves 75 or more persons.

The foregoing provisions shall 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 shall provide written notice to the city as soon as practicable prior to such expressive activity.

[(5)](6) Meetings or gatherings or other similar activity other than expressive activities held by organizations, associations or groups;

[(6)](7) Nonrecreational, public service activities, meetings and gatherings other than expressive activities held by organizations, communities or groups;



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~~[(7)](8)~~ Right of entry into parks for installation of utilities or construction work;

~~[(8)](9)~~ The playing of musical instruments as solo or two or more instruments which fall within the standards described in paragraphs (A), (B) and (C) of this subdivision:

- (A) Musical instruments which 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 which when played do not exceed the sound pressure level established in Section 10-1.2(b)(8); and
- (C) Musical instruments which are used or played continuously without a regular hourly break of 30 minutes, or for more than six hours within a day.

The use or the playing of a musical instrument which requires a permit as provided hereunder shall be subject to the following restrictions, in addition to any other conditions imposed by the rules and regulations promulgated by the director:

- (A) 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.
- (B) Judicial Review. Upon the department's refusal to issue a permit, the applicant for such permit shall be entitled to a review by the circuit court within 30 days after the date of such refusal. In such review, the department's decision shall be upheld in the absence of a judicial finding of abuse of discretion.
- (C) Restrictions. The use or the playing of a musical instrument which requires a permit as provided hereunder shall be subject to the following restrictions, in addition to any other conditions imposed by the rules adopted by the director:



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- (i) Time: Only between the hours of nine a.m. and six p.m. daily, and
  - (ii) Place: The playing of such instruments shall be restricted to the facility especially constructed for such purpose, such as the bandstand at Kapiolani Park or other areas within the park that shall be clearly designated in the permit, and
  - (iii) Manner: During the hours mentioned in subparagraph (i) of this paragraph, every half-hour of playing period shall immediately be followed by a 15-minute break or every one hour of playing period shall immediately be followed by a half-hour break; provided, that at no time shall there be any continuous playing exceeding an hour.
- (D) Duration of Permit. The duration of a permit issued pursuant to subdivision ~~[(8)](9)~~ shall not exceed one month~~;~~.

The foregoing provisions shall not apply to the playing of musical instruments in conjunction with expressive activities.

~~[(9)](10)~~ Hang gliding;

~~[(10)](11)~~ Commercial activities designed for profit, which include but are not limited to the exchange or buying and selling of commodities, or the providing of services relating to or connected with trade, traffic or commerce in general. For purposes of this subdivision, the use of land for utilities shall not be considered a commercial activity. The proposed commercial activities under the permit shall be 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;

~~[(11)](12)~~ Constructing, utilizing, placing, occupying, or in any other manner situating any tent."

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance 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 material or the underscoring.



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SECTION 5. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Ernest Martin (BR)

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DATE OF INTRODUCTION:

April 18, 2012  
Honolulu, Hawaii

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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PETER B. CARLISLE, Mayor  
City and County of Honolulu