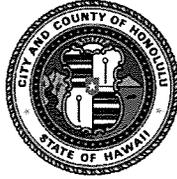


**OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU**

530 SOUTH KING STREET, ROOM 300 * HONOLULU, HAWAII 96813
PHONE: (808) 768-4141 * FAX: (808) 768-4242 * INTERNET: www.honolulu.gov

PETER B. CARLISLE
MAYOR



DOUGLAS S. CHIN
MANAGING DIRECTOR
CHRYSTN K. A. EADS
DEPUTY MANAGING DIRECTOR

July 25, 2012

The Honorable Ernest Y. Martin, Chair
and Councilmembers
Honolulu City Council
530 South King Street
Honolulu, Hawai'i 96813

Subject: Veto of Bill 11 (2012), CD1 – Relating to Public Parks

RECEIVED
CITY CLERK
& C OF HONOLULU
2012 JUL 25 PM 1:52

Dear Chair Martin and Councilmembers:

For the reasons stated below I am vetoing Bill 11.¹ Bill 11 passed the council by a margin of seven votes to two votes. Given the margin, I am aware that my veto may be overridden; in fact I anticipate the council to do so. I understand and in fact I concur with some of the reasons council members had for passing this bill and some of the reasons why they may not be changing their vote now. I am concerned, however, that this may be one of those “be careful what you wish for” situations where efforts to circumvent a total ban will intensify rather than resolve the problem.

Bill 5² received my support in March of this year, despite my having some of the same reservations about that bill as I have with Bill 11. The difference is Bill 5 in my opinion better took into account the viewpoints of both factions in Kailua and fashioned a reasonable and balanced and more enforceable compromise; Bill 11 goes much further. It sets a precedent of closing our beach parks to all commercial activity and affects people’s ability to earn a living, whether or not they contributed to the problem.

Regardless of how much a total ban at Kailua and Kalama Beach Parks might make good sense, I am concerned that allowing this bill to become law will make it harder to refuse other neighborhoods wishing to do the same down the road. The better approach is to work on rules island-wide. Bill 11 may set a less desirable precedent.

I believe enforcement is at the heart of solving the problem in Kailua. There is no denying that the situation was exacerbated by the City’s lack of enforcement, which dates back several years, and extends, regrettably, into this administration. The director of the department of parks and recreation is resolved to bring the department into compliance with the state and county laws relating to permitting and environmental review. In addition, Bill 5 has clarified the definition of commercial activities in the parks. This will make it easier to enforce our ordinances and park

¹ Bill 11 (2012), CD1

² Bill 5 (2011) CD1, FD1; Ordinance 12-2, codified in Revised Ordinances of Honolulu (“ROH”) Chapter 10

The Honorable Ernest Y. Martin, Chair
and Councilmembers
Page 2 of 2
July 25, 2012

rules.³

If the city council overrides my veto, my administration will follow the law. The corporation counsel, the police department, the prosecutor's office, and the department of parks and recreation will be meeting to resolve any enforcement issues that may arise. We are confident that the law can and will be enforced.

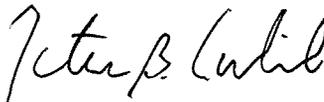
I am also vetoing Bill 11 because it may violate the separation of powers doctrine and disrupt the balance of power between the coordinate legislative and administrative branches. I note that the corporation counsel has declined to sign off on Bill 11 as to form and legality. The power to decide whether to permit or not to permit an activity on any specific property is not legislative, but executive in nature, to be exercised by the department which has control of the property, in this case the department of parks and recreation. City Council v. Fasi, 52 Hawai'i 3, 9, 467 P.2d 576, 580 (1970). This issue was not raised with respect to Bill 5 because the intrusion was comparatively slight, but Bill 11 compels me to voice my objection. The American legislative system is founded on the principles of separation of powers and checks and balances; it is a system that must be preserved.

Finally and significantly, Bill 11 restricts commercial filming activities at Kailua and Kalama Beach Parks to the weekends, provided all permit requirements are satisfied. It also prohibits it altogether at city owned or operated rights-of-way and easements from Lanikai to Kaimalino. In discussing the restrictions in Bill 11 with council members this week, it is clear restricting commercial filming activities in this way was not intended. If Bill 11 becomes law, this unintended restriction will be in place until the law is fixed.

Those council members I spoke to have agreed to consider the administration's proposed fix, attached as Exhibit A. Therefore, if the council overrides my veto I am confident that the commercial filming industry will eventually be exempt from the unintentional restrictions, provided all permit requirements are satisfied. I urge the Council to pass this fix as soon as possible.

In conclusion, I am very aware of the concerns of the citizens of Kailua both for and against Bill 11 and I agree with many of the arguments on both sides. This is clearly a situation that has gotten out of hand, and it is something that level headed people should have been able to talk about and work out short of a total ban of commercial activities at the beach parks.

Very truly yours,



Peter B. Carlisle
Mayor

³ Amended Rules and Regulations Relating to the Limited Commercial Use of Parks and Park Facilities (1992) promulgated pursuant to Ordinance 12-2, Section 10-1.3(b) in accordance with Hawai'i Revised Statutes (HRS) Chapter 91.



A BILL FOR AN ORDINANCE

A BILL FOR AN ORDINANCE RELATING TO COMMERCIAL FILMING ACTIVITIES BY AMENDING SECTIONS 10-1.2 AND 10-3.2 REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED, TO ALLOW COMMERCIAL FILMING ACTIVITIES AT KAILUA BEACH PARK, KALAMA BEACH PARK AND IN CITY OWNED OR OPERATED BEACH RIGHTS-OF-WAYS AND EASEMENTS FROM LANIKAI TO KAPOHO POINT (CASTLE POINT).

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

SECTION 1. Purpose. Commercial filming activities are currently allowed at Kailua Beach Park and Kalama Beach Park from 1:00 pm Saturdays through 6:30 am Mondays and prohibited at city owned or operated beach rights-of-way and easements from Lanikai to Kapoho Point (Castle Point). The purpose of this ordinance is to amend Sections 10-1.2 and 10-3.2, Revised Ordinances of Honolulu, as amended, to allow commercial filming activities at Kailua Beach Park, Kalama Beach Park and at city owned or operated beach rights-of-way and easements from Lanikai to Kapoho Point (Castle Point) without any time and day restrictions.

SECTION 2. Section 10-1.2, Revised Ordinances of Honolulu 1990 ("Park rules and regulations"), is amended by amending subsection (i) to read as follows:

"(i) Commercial activities, including recreational stops by tour companies, shall not be allowed at any time at city owned or operated beach rights-of-way and easements from Lanikai to Kapoho (Castle Point), except as otherwise provided in this chapter for commercial filming activities."

SECTION 3. Section 10-3.2, Revised Ordinances of Honolulu 1990 ("Commercial filming activities"), is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding any other provision in this chapter to the contrary, [C]commercial filming activities may take place at Kailua Beach Park, [and] Kalama Beach Park, and in city owned or operated beach rights-of-way and easements from Lanikai to Kapoho Point (Castle Point), [may take place from 1:00 p.m. on Saturdays through 6:30 a.m. on Mondays,] provided all permit requirements are satisfied."



A BILL FOR AN ORDINANCE

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.

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

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____ 20_____.

PETER B. CARLISLE, Mayor
City and County of Honolulu



A BILL FOR AN ORDINANCE

RELATING TO 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 city beach parks.

SECTION 2. Section 10-1.2 Revised Ordinances of Honolulu 1990 ("Park rules and regulations") is amended by amending subsection (h) to read as follows:

"(h) Commercial activities, including recreational stops by tour companies, shall not be allowed at any time at Kailua Beach Park and Kalama Beach [Park for any period of time from 1:00 p.m. on Saturdays through 6:30 a.m. on Mondays,] Park, except as otherwise provided in this chapter for commercial filming activities."

SECTION 3. Section 10-1.3, Revised Ordinances of Honolulu 1990 ("Permits"), 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 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;
- (5) Meetings or gatherings or other similar activity held by organizations, associations or groups;
- (6) Nonrecreational, public service activities, meetings and gatherings held by organizations, communities or groups;
- (7) Right of entry into parks for installation of utilities or construction work;



A BILL FOR AN ORDINANCE

- (8) 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:
 - (i) Time: Only between the hours of nine a.m. and six p.m. daily, and



A BILL FOR AN ORDINANCE

- (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) shall not exceed one month;
- (9) Hang gliding;
- (10) Commercial activities, provided that 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, and subject to department of parks and recreation rules and regulations regarding the solicitation of business, advertising, and commercial promotional activities. No permit shall be issued for commercial activities, including permits for recreational stops by commercial tour companies, at Kailua Beach Park and Kalama Beach Park, [shall allow such activity from 1:00 p.m. on Saturdays through 6:30 a.m. on Mondays,] except as otherwise provided in this chapter for commercial filming activities;
- (11) Constructing, utilizing, placing, occupying, or in any other manner situating any tent."



A BILL FOR AN ORDINANCE

SECTION 3. This ordinance shall take effect on July 1, 2012; provided that any permit allowing commercial activity to take place at Kailua Beach Park and Kalama Beach Park that was issued prior to the effective date of this ordinance shall continue to be valid until the permit expires.

INTRODUCED BY:

Ikaika Anderson

DATE OF INTRODUCTION:

February 9, 2012
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

~~APPROVED~~ this 25 day of JULY, 20 12.

~~DISAPPROVED~~
Peter B. Carlisle

PETER B. CARLISLE, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

ORDINANCE

BILL 11 (2012), CD1

Introduced: 02/09/12 By: IKAIKA ANDERSON

Committee: PARKS AND CULTURAL AFFAIRS

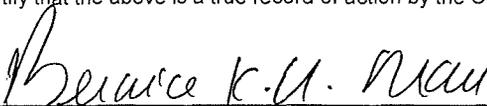
Title: A BILL FOR AN ORDINANCE RELATING TO PUBLIC PARKS.

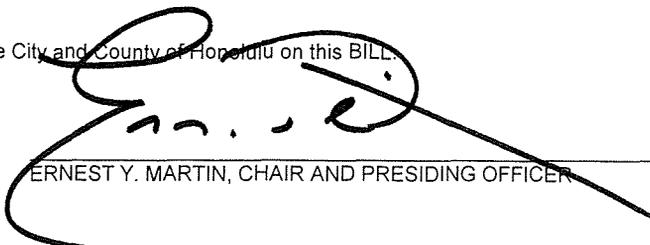
Links: [BILL 11 \(2012\)](#)
[BILL 11 \(2012\), CD1](#)
[CR-141](#)

Voting Legend: Y= Aye, Y* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

COUNCIL	02/15/12	BILL PASSED FIRST READING AND WAS REFERRED TO COMMITTEE ON PARKS AND CULTURAL AFFAIRS.				
		ANDERSON Y	BERG Y	CACHOLA Y	CHANG Y	GABBARD Y
		GARCIA Y	HARIMOTO Y	KOBAYASHI Y	MARTIN Y	
PARKS AND CULTURAL AFFAIRS	02/28/12	BILL DEFERRED IN COMMITTEE.				
PARKS AND CULTURAL AFFAIRS	04/18/12	CR-141 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AS AMENDED IN <u>CD1</u> FORM AND SCHEDULING OF A PUBLIC HEARING.				
PUBLISH	04/28/12	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.				
COUNCIL/PUBLIC HEARING	05/09/12	CR-141 ADOPTED. BILL PASSED SECOND READING AS AMENDED, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON PARKS AND CULTURAL AFFAIRS.				
		ANDERSON Y	BERG Y	CACHOLA Y*	CHANG A	GABBARD Y
		GARCIA Y	HARIMOTO N	KOBAYASHI Y	MARTIN Y	
PUBLISH	05/21/12	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.				
PARKS AND CULTURAL AFFAIRS	05/22/12	BILL DEFERRED IN COMMITTEE.				
		<u>CC-180</u> BERG – RE-REFERRAL OF BILL 11 (2012), CD1 FROM PARKS AND CULTURAL AFFAIRS TO COUNCIL FLOOR.				
COUNCIL	07/11/12	BILL 11 (2012), CD1 PASSED THIRD READING.				
		ANDERSON Y	BERG Y	CACHOLA N	CHANG Y*	GABBARD Y
		GARCIA Y*	HARIMOTO N	KOBAYASHI Y	MARTIN Y*	

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


BERNICE K. N. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER