



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813

KAPIOLANI PARK TRUST

Rod Tam, Chair
Donovan M. Dela Cruz, Vice-Chair
Romy M. Cachola, Trustee
Charles Djou, Trustee
Mike Gabbard, Trustee
Nestor Garcia, Trustee
Ann H. Kobayashi, Trustee
Barbara Marshall, Trustee
Gary Okino, Trustee

MINUTES

REGULAR MEETING
TUESDAY, MAY 13, 2003

COUNCIL COMMITTEE MEETING ROOM
2ND FLOOR, HONOLULU HALE
HONOLULU, HAWAII 96813

CALL TO ORDER

The meeting of the Kapiolani Park Trust was called to order by Trust Chair Tam at 2:40 p.m. with Trustees Cachola, Dela Cruz, Djou, Garcia, Kobayashi, Marshall and Okino present. Trustee Gabbard was excused from this meeting.

STAFF PRESENT

Claude Uehara, Senior Advisor to Committee Chair Tam
Calvin Azama, Analyst, Office of Council Services
Stan Kuniyuki, Attorney, Office of Council Services
Lori K. Sunakoda, Deputy, Department of the Corporation Counsel, assigned to the Kapiolani Park Trust
Dawn Spurlin, Deputy, Department of Corporation Counsel, assigned to the Parks & Economic Development Committee
Joanne Tachibana, Committee Clerk, City Clerk's Office

ORDER OF BUSINESS

FOR DISCUSSION

1. **INFORMATIONAL BRIEFING ON THE KAPIOLANI PARK TRUST**

Administration/Others Present
Lori Sunakoda, Deputy
Dawn Spurlin, Deputy
Department of the Corporation Counsel

The following individual provided general comments on the Kapiolani Park Trust:

Michelle Matson, Kapiolani Park Advisory Council

The following communication was circulated at the meeting and filed:

D-508 from Lori Sunakoda, Department of the Corporation Counsel, submitting a PowerPoint presentation outlining the Kapiolani Park Trust ("the Trust") history, duties and responsibilities of the trustees and pending issues related to the Trust.

Ms. Sunakoda, the Department of the Corporation Counsel attorney assigned to represent the trustees in legal proceeding relating to the Trust, provided an overview of the Trust, as outlined in Communication D-508.

The operation and management of Kapiolani Park was transferred to the City and County of Honolulu through a 1913 Executive Order issued by the Governor of Hawaii. Until 1991, the Kapiolani Park Commission was charged with serving as trustees for the public charitable trust. In 1991, the Circuit Court issued an order significant to the stewardship and management of the Trust lands. The court required that current city councilmembers serve as trustees for the duration of their service. While many trusts provide trustees with direct control and management responsibilities, the City's Department of Parks and Recreation was assigned control of managing the day-to-day operations and maintenance of Kapiolani Park and its trust lands. The 1991 court order also set forth the specific duties and responsibilities of the trustees and addressed the propriety of certain uses of Trust land.

The State Attorney General is charged with the responsibility of representing the interest of the general public in ensuring that the Trust is being properly administered. While the trustees may petition the Court for guidance if they determine that there may be a deviation from any of the Trust terms or to obtain clarification on provisions of the Trust, the State Attorney General may also file a petition if he/she feels that the Trust is not being carried out in accordance with the requisite terms.

The trustees are required to issue a report to the Court every three years. The narrative report provides a summary of issues addressed by the trustees during the past three years, as well as any actions taken by the trustees during that period. A financial account is not included in the report, as the Trust is a non-income producing trust and Park operations are maintained through City Council appropriations to the Department of Parks and Recreation budget.

The report must be approved by a majority of the trustees before being filed with the Court and becoming part of the public record. Interested parties are permitted to file a response and objections to the report.

Ms. Sunakoda reviewed the "Special Rules of the Council as Trustees of Kapiolani Park," as outlined in Communication D-508, and provided the following additional information:

- The Council's Parks Committee Chair and Vice-Chair are automatically designated as the Chair and Vice-Chair for the trustees.
- The adoption of a resolution by councilmembers in their role as trustees is not considered an action of the City Council.
- The use of the term "City Clerk" in the rules refers to the clerk assigned to the Council's Parks Committee.

Ms. Sunakoda and Ms. Spurlin provided an update on pending matters related to the Kapiolani Park Trust.

The trustees previously authorized the Corporation Counsel to file a petition with the Circuit Court for instructions regarding the permissibility of art sales at the Honolulu Zoo fence and craft fairs on Trust land. The Kapiolani Park Preservation Society viewed the activities as illegal because the artists and crafters involved personally benefit from the commercial activity on Trust land.

The petition experienced procedural delays when it was filed in Circuit Court in May 1999. It was subsequently rejected by the civil court on the basis that the petition should have been more appropriately filed in probate court. A new petition was filed on February 25, 2003. Both the Department of Parks and Recreation and the State Attorney General filed responses to the petition. The matter is currently before Judge Colleen Hirai for consideration on June 6, 2003.

The issues before the court are: 1) whether the activities are legal; and 2) whether the commercial aspect of the activities is an acceptable use. The City has taken the position that the Honolulu Zoo art fence and craft fairs are permissible.

The involved parties are currently addressing a request made by the State Attorney General to appoint a Special Master to investigate the issues and develop a report. If approved, court rules normally require the petitioners or petitioners' counsel to pay the fees relating to work performed by the Special Master. The Corporation Counsel opposes an appointment, since the non-income producing Trust has no funds and the responsibility of payment would fall onto the Department of Parks and Recreation. Additionally, the City feels that it is the responsibility of the State Attorney General to conduct the investigation and issue a report.

There are indications that Judge Hirai may grant the request of the Attorney General for a Special Master. There is a court rule provision that allows the court the option to assess the cost or a portion of the cost upon the other parties involved in the litigation. Consequently, the Corporation Counsel has asked that the State be required to pay a portion of the expenses. While the fees are not expected to be costly, the City has expressed its willingness to facilitate the investigation in order to minimize the price to the public.

In the event that a Special Master is appointed, the State Attorney General has also requested the investigation of the validity of the iwi kupuna memorial fronting Kapiolani Park. It was noted that the court may decide not to review the matter or may eventually order the removal of the memorial. Alternately, the court may require the replacement of land or payments to make up for the use of Trust land for non-park purposes.

Trustee concerns regarding personal liability were addressed. The trustees were assured that they would be covered by the City's public officials' liability policy as long as they performed their duties subject to their fiduciary responsibility. The policy recognizes that the councilmembers serve as trustees solely by virtue of their status as councilmembers.

While an individual councilmember cannot choose to not serve as a trustee, past councilmembers have chosen to refuse to participate in Trust matters. The issue would be of concern only if the trustees were unable to establish the quorum required to take action on a Trust issue. An additional point was raised that the non-participation of a councilmember in Trust matters could be brought forth in a lawsuit as the non-fulfillment of that councilmember's fiduciary responsibilities.

A question was raised regarding the role of trustees in approving certain uses of Trust land, such as events like Sunset on the Beach and cultural festivals. The

1999 court order was clear in its stipulation that the Department of Parks and Recreation would be responsible for the day-to-day management of the Trust land. Therefore, that department is responsible for determining the appropriateness of activities on Trust land. The trustees' role is to take action when there is a question about whether an activity violates the terms of the Trust.

It was emphasized that the trustees may seek guidance from the court at any time, as it provides additional assurance when the trustees make decisions and serves to protect the trustees from liability. The court has reprimanded the trustees in the past for failing to seek instruction. However, Ms. Spurlin also cautioned the trustees against petitioning the court on every issue. Should the court decide that a Special Master is necessary to examine the issue, the City would be responsible for investigation costs.

It was noted that commercial activity on Trust lands was contemplated when the Trust was first established via the enactment of Act 53, as specific provisions were made to allow the charging of admissions and special entertainment. The imposition of fees is generally allowed if the fee is assessed upon a user for a benefit provided to the user and the funds are returned to the property (i.e., for maintenance and operation costs).

Ms. Spurlin reported that the City has issued citations to homeless individuals for camping in the Park. She emphasized that these individuals are not being penalized for being homeless but for camping in a park that is not a designated campsite. In response to a question regarding complaints that may be presented to the Trust, Ms. Sunakoda reminded the trustees that their responsibility is to insure that day-to-day management of the Park is consistent with the Trust. If activities such as camping are inconsistent with the terms of park use, the Trustees are obligated to investigate the matter and take appropriate action.

Ms. Matson provided background information on the Kapiolani Park Advisory Council and on the history of Kapiolani Park. She admonished past Kapiolani Park Trustees for refusing to provide comment on the Honolulu Zoo Redevelopment project and for failing to address the impact of the Bus Rapid Transit project on Trust lands.

Trust Chair Tam noted his intention to focus on improving communication with the Administration about the day-to-day maintenance of the Park, as well as the Administration's activities and future plans for the Park.

2. **EXECUTIVE SESSION – CLAIMS AND OTHER MATTERS PROTECTED FROM DISCLOSURE BY LAW**

There being no claims or other matters protected from disclosure by law for consideration, the Trust did not resolve into Executive Session.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:57 p.m.

Respectfully submitted,



DENISE C. DE COSTA
City Clerk

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DATE APPROVED
SEP 07 2004