

OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

EMBER LEE SHINN
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

June 12, 2014

The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Martin and Councilmembers:

SUBJECT: A Bill for an Ordinance Relating to Public Sidewalks and
A Bill for an Ordinance Relating to Urinating and Defecating in
Public

Enclosed for your consideration are two proposed bills that will regulate conduct in the Waikiki Special District as the District is described in the Land Use Ordinance, ROH Chapter 21.

The first bill is to prohibit, subject to exceptions, persons from sitting or lying on public sidewalks in the Waikiki Special District. The first bill is patterned after Seattle's sit-lie ordinance that the Ninth Circuit Court of Appeals upheld finding that Seattle's sit-lie ordinance on its face did not violate the First Amendment or substantive due process, Roulette v. City of Seattle, 97 F.3d 300 (9th Cir. 1996).

Although Seattle's sit-lie ordinance prohibits a person from sitting and lying on public sidewalks in certain commercial areas between the hours of 7:00 a.m. to 9:00 p.m., the draft bill does not include a similar time limitation. Because the hotels and commercial businesses in the Waikiki Special District service the visitor industry on a 24-hour basis; many with liquor licenses that authorize the sale of alcohol up to 4:00 a.m., a 24-hour prohibition would ensure sidewalk access to the hotels and commercial businesses as well as ensure pedestrian safety for the visitors and abutting neighborhoods.

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The Honorable Ernest Y. Martin
Chair and Presiding Officers
and Members
June 12, 2014
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The second bill is to prohibit urinating or defecating in the Waikiki Special District that is (a) publicly-owned property, or (b) privately-owned property open for public use or to which the public has been invited for entertainment or business purposes, or (c) in any area where such conduct is likely to be observed by any member of the public.

The second bill is substantially based upon the existing prohibition in the Hawaii Penal Code, Act 84 (2004), as amended, that applies to the "Downtown Honolulu area" as that area is described in the Act. The second bill varies from the existing Penal Code prohibition in its violation provision that provides instead for a petty misdemeanor upon conviction, consistent with the violation provision for the first bill that prohibits persons from sitting or lying on public sidewalks in the Waikiki Special District.

With the Council's support, I anticipate that together we can make significant improvements for our Waikiki businesses, workers, and visitors.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk Caldwell", with a long, wavy horizontal line extending to the right.

Kirk Caldwell
Mayor

Enclosures

LIQUOR LICENSE LISTING

TYPE	NAME	LICNUM	ADDRESS
CABARET	DA BIG KAHUNA WAIKIKI	I0110	2299 Kuhio Avenue
	FUSION WAIKIKI	I0059	2260 Kuhio Avenue
	KELLEY O'NEILS	I0074	311 Lewers Street
	LEGENDS IN CONCERT WAIKIKI	I0124	2201 Kalakaua Ave., Space Nos B401
	MAGIC OF POLYNESIA	I0109	2300 Kalakaua Avenue
	MOOSE MCGILLYCUDDY'S PUB & CAFE	I0080	310 Lewers Street
	NASHVILLE WAIKIKI	I0082	2330 Kuhio Avenue
	PLAYBAR	I0001	2310 Kuhio Avenue
	SURF CITY BAR & GRILL/LAVA ROCK LOUNGE	I0116	2330 Kalakaua Ave., Space CB001 & CB201
	TSUNAMI WAIKIKI	I0111	2260 Kuhio Avenue
HOTEL	DOUBLETREE ALANA WAIKIKI	L0042	1956 Ala Moana Blvd.
	EMBASSY SUITES HOTEL-WAIKIKI BEACH WALK	L0048	201 Beach Walk
	HALEKULANI HOTEL	L0014	2199 Kalia Road
	HAWAII PRINCE HOTEL WAIKIKI	L0013	100 Holomoana
	HAWAIIAN MONARCH HOTEL	L0041	444 Niu Street
	HILTON HAWAIIAN VILLAGE	L0005	2005 Kalia Road
	HILTON HAWAIIAN WAIKIKI	L0015	2500 Kuhio Avenue
	HOTEL RENEW BY ASTON	L0050	129 Paoakalani Avenue
	HULA GRILL WAIKIKI	L0017	2335 Kalakaua Avenue
	HYATT PLACE WAIKIKI BEACH	L0053	175 Paoakalani Avenue
	HYATT REGENCY WAIKIKI AT HEMMETER CENTER	L0006	2424 Kalakaua Avenue
	ILIKAI HOTEL	L0007	1777 Ala Moana Blvd.
	LULU'S WAIKIKI	L0047	2586 Kalakaua Avenue
	MOANA-SURFRIDER HOTEL	L0027	2365 Kalakaua Avenue
	OUTRIGGER REEF	L0003	2169 Kalia Road

PACIFIC BEACH HOTEL	L0009	2490 Kalakaua Avenue
PRINCESS KAIULANI HOTEL	L0028	120 Kaiulani Avenue
QUEEN KAPIOLANI HOTEL	L0034	150 Kapahulu Avenue
ROYAL HAWAIIAN HOTEL	L0026	2259 Kalakaua Avenue
SHERATON WAIKIKI HOTEL	L0025	2255 Kalakaua Avenue
SPADA BAR & RESTAURANT	L0049	2200 Kuhio Avenue
THE MODERN HONOLULU	L0051	1775 Ala Moana Blvd.
TIKI'S GRILL & BAR, LLC	L0011	2570 Kalakaua Avenue
WAIKIKI BEACH MARRIOTT RESORT	L0018	2552 Kalakaua Avenue
WAIKIKI JOY	L0019	320 Lewers Street
WAIKIKI PARC HOTEL	L0012	2233 Helumoa Road
WAIKIKI RESORT HOTEL	L0036	2460 Koa Avenue
WAIKIKI SAND VILLA HOTEL	L0035	2375 ALA Wai Blvd.

EAST HONOLULU DISTRICT I PARK CLOSURE

Updated 3/21/14

	PARK	CLOSURE TIME	Complex
1	Aina Koa Neighborhood Park	10:00 p.m. - 5:00 a.m.	Waialae
2	Ala Wai Community Park	11:00 p.m. - 5:00 a.m.	Manoa
3	Ala Wai Golf Course Access Road	10:00 p.m. - 5:00 a.m.	Kapiolani Regional Park
4	Ala Wai Neighborhood Park	10:00 p.m. - 5:00 a.m.	Manoa
5	Ala Wai Neighborhood Park, Annex	10:00 p.m. - 5:00 a.m.	Manoa
6	Ala Wai Promenade, Kalakaua-McCully	10:00 p.m. - 5:00 a.m.	Manoa
7	Crane Community Park	10:00 p.m. - 5:00 a.m.	Diamond Head
8	Date Street Mini Park	10:00 p.m. - 5:00 a.m.	Manoa
9	Diamond Head Beach Park	10:00 p.m. - 5:00 a.m.	Kapiolani Regional Park
10	Hanauma Bay Nature Preserve	6:00 p.m. - 6:00 a.m. (Winter)	Hanauma Bay
		7:00 p.m. - 6:00 a.m. (Summer)	
11	Frank Judd Mini Park	10:00 p.m. - 5:00 a.m.	Manoa
12	Kahala Community Park	10:00 p.m. - 5:00 a.m.	Waialae
13	Kaimuki Community Park	10:00 p.m. - 5:00 a.m.	Diamond Head
14	Kalo Place Mini Park	10:00 p.m. - 5:00 a.m.	Manoa
15	Kamanele Square Urban Park	10:00 p.m. - 5:00 a.m.	Manoa
16	Kanewai Community Park	10:00 p.m. - 5:00 a.m.	Diamond Head
17	Kapaolono Community Park	10:00 p.m. - 5:00 a.m.	Waialae
18	Kapiolani Park	12:00 a.m. - 5:00 a.m.	Kapiolani Regional Park
19	Koke'e Beach Park	10:00 p.m. - 5:00 a.m.	Hanauma Bay
20	Koko Head District Park	11:00 p.m. - 4:00 a.m.	Koko Head
21	Koko Kai Beach Park	10:00 p.m. - 5:00 a.m.	Hanauma Bay
22	Kuhio Beach Park	2:00 a.m. - 5:00 a.m.	Kapiolani Regional Park
23	Kuilei Cliffs (Diamond Head Road lookouts)	10:00 p.m. - 5:00 a.m.	Kapiolani Regional Park
24	Kuliouou Beach Park	10:00 p.m. - 5:00 a.m.	Hanauma Bay
25	Leahi Beach Park	10:00 p.m. - 5:00 a.m.	Kapiolani Regional Park
26	Makalei Beach Park	10:00 p.m. - 5:00 a.m.	Kapiolani Regional Park
27	Manoa Valley District Park	10:00 p.m. - 5:00 a.m.	Manoa
28	Maunalani Community Park	10:00 p.m. - 5:00 a.m.	Diamond Head
29	Mau'umae Nature Park	10:00 p.m. - 5:00 a.m.	Diamond Head
30	McCully District Park	10:00 p.m. - 5:00 a.m.	Manoa
31	Moiliili Neighborhood Park	10:00 p.m. - 5:00 a.m.	Manoa
32	Moiliili Triangle Park	10:00 p.m. - 5:00 a.m.	Manoa
33	Old Stadium Park	10:00 p.m. - 5:00 a.m.	Manoa
34	Operation Red Wing Medal of Honor Park	10:00 p.m. - 5:00 a.m.	Kapiolani Regional Park
35	Paki Community Park	10:00 p.m. - 5:00 a.m.	Diamond Head
36	Palolo Valley District Park	10:00 p.m. - 5:00 a.m.	Diamond Head
37	Princess Kaiulani Triangle Urban Park	10:00 p.m. - 5:00 a.m.	Kapiolani Regional Park
38	Pu'u O Kaimuki	10:00 p.m. - 5:00 a.m.	Diamond Head
39	Waialae Beach Park, parking lot	10:00 p.m. - 5:00 a.m.	Waialae
40	Wilson Community Park	10:00 p.m. - 5:00 a.m.	Waialae



A BILL FOR AN ORDINANCE

RELATING TO PUBLIC SIDEWALKS.

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

SECTION 1. Findings and purpose. The purpose of this ordinance is to prohibit, subject to exceptions, persons from sitting or lying on public sidewalks in the Waikiki special district.

The council finds:

- (a) The Waikiki special district is a dense, urban environment where the public sidewalks are heavily used by pedestrians and area businesses. Everyone uses the public sidewalk for travel. Maintaining pedestrian and authorized commercial activity on public sidewalks is essential to public safety, thriving neighborhoods and a vital economy in the City. Public sidewalks are created and maintained for the primary purpose of enabling pedestrians to safely and efficiently move about from place to place, facilitating deliveries of goods and services, and providing potential customers with convenient access to goods and services.

Sitting or lying down on the sidewalk is not the customary use of the public sidewalks. The need to maintain the flow of pedestrian and authorized commercial traffic on sidewalks ensures accessibility to businesses, shops, restaurants, and other commercial enterprises. Persons who sit or lie down on public sidewalks threaten their own safety and the safety of pedestrians, especially the elderly, disabled, and vision-impaired, who are put at increased risk when they must see and navigate around persons unexpectedly sitting or lying upon the public sidewalk.

The public welfare is promoted by an economically healthy Waikiki special district area that attracts people, including visitors, to reside, shop, work and recreate. The Waikiki special district area is a concentration of visitor and resident accommodations, restaurants, retail shops and other commercial establishments that offer a unique visitor experience and provides easily-accessible goods and services, employment opportunities, the tax revenues necessary to support essential public services, and the economic productivity necessary to maintain and improve property within the area. Many of the hotels and commercial businesses, including food



A BILL FOR AN ORDINANCE

and beverage establishments, in the Waikiki special district provide services to the visitors twenty-four hours a day. Approximately twenty eight hotels and ten commercial businesses in the Waikiki special district have either a hotel or cabaret liquor license that allows the licensee to sell or serve liquor to 4:00 a.m.

Persons who sit or lie down on public sidewalks deter residents and visitors from patronizing local shops, restaurants, businesses, and cultural and art venues, and deter people from using the neighborhood sidewalks in the Waikiki special district. Business areas and neighborhoods become dangerous to pedestrian safety and economic vitality in the Waikiki special district is adversely affected when individuals block the public sidewalks. This behavior causes a cycle of decline as residents and visitors go elsewhere to walk, meet, shop and dine, which contributes to undermining the essential economic viability of the Waikiki special district, and residents become intimidated from using the public sidewalks because of obstructions in their own neighborhoods.

- (b) The prohibition against sitting or lying on sidewalks set forth below leaves intact the individual's right to speak, protest or engage in other lawful activity on any sidewalk consistent with the individual's free speech rights.
- (c) The prohibition narrowly applies only to public sidewalks in the Waikiki special district. There are a number of places where the restrictions of this ordinance do not apply, including private property, beaches, plazas, public parks, and other common areas open to the public. The prohibition contains exceptions for medical emergencies, and expressive activities, among others.
- (d) The council acknowledges that there are reasons why one might sit or lie on a public sidewalk in the Waikiki special district. The City has offered and continues to offer services to those engaged in sitting or lying on the sidewalk who appear to be in need, or to those who request service assistance. However, in many cases, these persons refuse such services or continue the conduct despite the provision of services. The City will continue to invest in services for those in need and to make efforts to maintain and improve safety on public sidewalks for everyone. A law enforcement officer may not issue a citation without first warning a person



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that sitting or lying down on a public sidewalk in the Waikiki special district is unlawful.

- (e) Present laws that prohibit the obstruction of sidewalks do not adequately address the safety hazards, disruption and deterrence to pedestrian traffic caused by persons sitting or lying on the public sidewalks in the Waikiki special district.

SECTION 2. Chapter 29, Revised Ordinances of Honolulu 1990 ("Streets, Sidewalks, Malls and Other Public Places"), as amended, is amended by adding a new article to be appropriately designated by the revisor of ordinances and to read as follows:

"Article ____ . Sitting or Lying on Public Sidewalks

Sec. 29-__ .1 Prohibition-Exceptions-Citations

- (a) No person shall sit or lie on a public sidewalk, or on a tarp, towel, sheet, blanket, sleeping bag, bedding, planter, chair, bench, or any other object or material placed upon a public sidewalk in the Waikiki special district.
- (b) The prohibitions in subsection (a) shall not apply to:
 - (1) Any person sitting or lying on a sidewalk due to a medical emergency;
 - (2) Any person who, as a result of a disability, is utilizing a wheelchair or other similar device to move about the public sidewalk;
 - (3) Any person sitting or lying on a sidewalk for the purpose of engaging in an expressive activity;
 - (4) Any person sitting on a sidewalk while attending or viewing any parade, festival, performance, rally, demonstration or similar event conducted on the street pursuant to a permit issued by the city;
 - (5) Any person engaged in a maintenance, repair or construction activity on behalf of a governmental entity or a public utility;



A BILL FOR AN ORDINANCE

- (6) Any child who is sitting or lying in a baby carriage, stroller, or carrier, or similar device, to move about the public sidewalk;
 - (7) Any person sitting on a chair or bench located on the public sidewalk which is placed there by a public agency; or
 - (8) Any person sitting in line for goods or services unless the person or person's possessions impede the ability of pedestrians to travel along the length of the sidewalk or enter a doorway or other entrance alongside the sidewalk.
- (c) No person shall be cited for a violation of this section unless the person engages in conduct prohibited by this article after having been notified by a law enforcement officer that the conduct violates this section.
- (d) As used in this section:

"Expressive activity" 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.

"Public sidewalk" means a publicly owned or maintained "sidewalk," as defined in Section 29-1.1, and includes a "replacement sidewalk" as defined in that section.

"Waikiki special district" means the area described in Section 21-9.80-2.

Sec. 29-_.2 Penalty.

Any person violating any provision of this article shall, upon conviction, be guilty of a petty misdemeanor and subject to punishment in accordance with HRS Sections 706-640 and 706-663, as amended."



A BILL FOR AN ORDINANCE

SECTION 3. 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 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu



A BILL FOR AN ORDINANCE

RELATING TO URINATING AND DEFECATING IN PUBLIC

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

SECTION 1. Urinating and defecating in public creates a public health risk because of the possible spread of disease and other health hazards stemming from exposed untreated human waste. These concerns associated with public urination and defecation discourage people from patronizing establishments located in the Waikiki special district as well as from utilizing the beaches and parks.

The purpose of this ordinance is to prohibit urinating and defecating in public within the Waikiki special district.

SECTION 2. Chapter 40, Revised Ordinances of Honolulu 1990, as amended, is further amended by adding a new article to be appropriately designated by the reviser of ordinances and to read as follows:

Article _____. Urinating or Defecating in Public Prohibited

Sec. 40-____.1 Definitions.

For the purposes of this article:

“Waikiki special district” means the Waikiki special district as defined in Section 21-9.80-2.

“Public place” means any publicly-owned or privately-owned property open for public use or to which the public is invited for entertainment or business purposes and includes but is not limited to any street, sidewalk, driveway, alley, doorway, mall, plaza, park, public building, or parking lot.

Sec. 40-____.2 Prohibition.

Within the boundaries of the Waikiki special district, no person shall intentionally or knowingly urinate or defecate (a) in a public place, or (b) in any area where such an act is likely to be observed by any member of the public.



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Sec. 40-____.3 Exceptions.

(1) This section shall not apply in cases where the person failed to use a restroom or other toilet facility because of a medical condition verified by a licensed physician.

(2) This section shall not apply to a person urinating or defecating while using appropriate fixtures in any restroom or other toilet facility designed for the sanitary disposal of human waste.

Sec. 40-____.4 Violation-Penalty.

Any person violating any provision of this article shall, upon conviction, be guilty of a petty misdemeanor and subject to punishment in accordance with HRS, Sections 706-640 and 706-663, as amended.



A BILL FOR AN ORDINANCE

SECTION 3. This ordinance shall take effect upon approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu