

SUMMARY OF PROPOSED COMMITTEE DRAFT:

**Bill 8 (2015)
RELATING TO PUBLIC PARKS**

PROPOSED CD1 makes the following amendments:

- A. Further amends ROH Section 10-1.1 by:
1. Amending the definition of "commercial activity" to specify that the use of premises and facilities at Waimanalo Bay Beach Park and Waimanalo Beach Park for youth sports for students ages pre-school through high school and educational events, for students ages pre-school through high school, conducted or offered by educational institutions recognized by the State of Hawaii Department of Education, will not be considered "commercial activities;"
 2. Amending the definition of "recreational stops" to include guided tours as an activity in the use of city beach parks by commercial tour companies; and
 3. Adding a definition of "director" to mean the Director of the Department of Parks and Recreation, or the Director's designated representative.
- B. Further amends ROH Section 10-1.2 by:
1. Deleting the amendment in subsection (h) regarding the prohibition of commercial activities, including recreational stops by commercial tour companies, at Waimanalo Bay Beach Park, Waimanalo Beach Park, Kaiona Beach Park, Kaupo Beach Park, and Makapuu Beach Park and inserting, instead, a provision that provides for the prohibition of recreational stops by commercial tour companies at:
 - a. Waimanalo Beach Park, Kaiona Beach Park, Kaupo Beach Park, Makapuu Beach Park, and Bellows Field Beach Park at any time; and
 - b. Waimanalo Bay Beach Park from 6:30 p.m. on Fridays through 6:30 a.m. on Mondays and on all state and federal holidays; and
 2. Deleting the prohibition of commercial activities, including recreational stops by tour companies, at City-owned or operated beach rights-of-way and easements from Makapuu Point to and including Waimanalo Bay Beach Park and inserting, instead, a provision that provides for the prohibition of recreational stops by commercial tour companies at City-owned or operated beach rights-of-way and easements from Makapuu Point to and including Waimanalo Bay Beach Park, including the Waimanalo Bay Beach Park access gate on Aloiloi Street.

- C. Amends ROH Section 10-1.3(a)(11) to prohibit the issuance of permits for recreational stops by commercial tour companies at:
1. Waimanalo Beach Park, Kaiona Beach Park, Kaupo Beach Park, Makapuu Beach Park, and Bellows Field Beach Park; and
 2. Waimanalo Bay Beach Park between 6:30 p.m. on Fridays through 6:30 a.m. on Mondays, and on all state and federal holidays, and provide that no more than ____ permits per ____ may be issued for recreational stops by commercial tour companies at Waimanalo Bay Beach Park, and that such permits may only be issued to commercial tour companies for stops by tour vans or vehicles that seat no more than 15 passengers.
- D. Clarifies, in ROH Section 10-1.3(b), that the director shall promulgate rules and regulations to recommend to the council fee schedules based upon the cost of administration for commercial activities.
- E. Amends ROH Section 10-1.6(d)(2), to provide that violations of Sections 10-1.2(h) and (i) will result in fines of not less \$25.00, but not more than \$500.00.
- F. Deletes Section 4 of the bill, which would have amended ROH Section 10-3.2(c), and renumbers the remaining sections of the bill.
- G. Adds an uncodified SECTION 6, which provides that within 90 days after the effective date of the ordinance, the DPR Director shall prepare and submit to the Council a draft bill that would amend ROH Chapter 10, Article 2, to propose a fee schedule, based on administrative costs, for permits issued to commercial tour companies for recreational stops at Waimanalo Bay Beach Park. Subsequent SECTIONS of the bill are renumbered.
- H. Clarifies, in SECTION 8 of the bill that any permits issued prior to the effective date of this ordinance allowing recreational stops by commercial tour companies to take place at a park affected by this ordinance would continue to be valid until the permit expires.
- I. Makes miscellaneous technical and non-substantive amendments.



A BILL FOR AN ORDINANCE

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 address commercial activities at certain City beach parks.

SECTION 2. Section 10-1.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended as follows:

1. By amending the definition of "commercial activity" to read as follows:

""Commercial activity" means a use or purpose designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities; the providing of services relating to or connected with trade, traffic or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes.

[The] Notwithstanding the foregoing, the following are not considered commercial activities: the use of land for utilities[, and]; the use of the premises and facilities for official canoe regattas [shall not be considered a commercial activity.]; and the use of the premises and facilities at Waimanalo Bay Beach Park and Waimanalo Beach Park for music festivals, country fairs, farmer's markets, organized youth sports for students ages pre-school through high school, and educational events that are for students ages pre-school through high school and conducted or offered by educational institutions recognized by the State of Hawaii department of education."

2. By amending the definition of "recreational stops" to read as follows:

""Recreational stops" means the use of city beach parks by commercial tour companies for activities that may include, but are not limited to, sightseeing, spectating, picture taking, beach combing, swimming, guided tours, and eating of prepared picnic lunches."

3. By adding a new definition of "director" to read as follows:

""Director" means the director of the department of parks and recreation, or the director's designated representative."



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SECTION 3. Section 10-1.2, Revised Ordinances of Honolulu 1990 ("Park rules and regulations"), is amended by amending subsections (h) and (i) to read as follows:

- "(h) Commercial activities, including recreational stops by commercial tour companies, [shall] are not [be] allowed at any time at Kailua Beach Park and Kalama Beach Park, except as otherwise provided in this chapter for commercial filming activities. Recreational stops by commercial tour companies are not allowed at:
- (1) Waimanalo Beach Park, Kaiona Beach Park, Kaupo Beach Park, Makapuu Beach Park, and Bellows Field Beach Park at any time; and
 - (2) Waimanalo Bay Beach Park from 6:30 p.m. on Fridays through 6:30 a.m. on Mondays and on all state and federal holidays.
- (i) Commercial activities, including recreational stops by commercial tour companies, [shall] are not [be] allowed at any time at city owned or operated beach rights-of-way and easements from Lanikai to Kapoho Point (Castle Point). Recreational stops by commercial tour companies are not allowed at any time at city owned or operated beach rights-of-way and easements from Makapuu Point to and including Waimanalo Bay Beach Park, including the Waimanalo Bay Beach Park access gate on Aloiloi Street."

SECTION 4. Section 10-1.3, Revised Ordinances of Honolulu 1990 ("Permits"), is amended by amending subsections (a) and (b) 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] must 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 a league, organization, association, group or individual[;].
 - (4) Recreational activities, including nonprofit fundraising activities, sponsored by community organizations, associations, groups or individuals[;].
 - (5) Expressive Activities.



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- (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] is required when the expressive activity involves 75 or more persons.

[The foregoing provisions shall] This subdivision does 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] must provide written notice to the city as soon as practicable prior to such expressive activity.

- (6) Meetings or gatherings or other similar activity other than expressive activities held by organizations, associations or groups[;].
- (7) Nonrecreational, public service activities, meetings and gatherings other than expressive activities held by organizations, communities or groups[;].
- (8) Right of entry into parks for installation of utilities or construction work[;].



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- (9) The playing of musical instruments as solo or two or more instruments, which fall within the standards described in the first paragraphs (A), (B) and (C) [of this subdivision]:
- (A) Musical instruments [which] that are limited to two octaves or less, including but not limited to the following musical instruments:
- (i) [tuba,] Tuba;
 - (ii) [tympani,] Tympani;
 - (iii) [maracas,] Maracas;
 - (iv) [uliuli,] Uliuli;
 - (v) [castanets,] Castanets;
 - (vi) [tambourine] Tambourine; or
 - (vii) [percussion] Percussion instruments in which a human hand or drumsticks are used to create sounds therefrom;
- (B) Musical instruments [which] that when played do not exceed the sound pressure level established in Section 10-1.2(b)(8); and
- (C) Musical instruments [which] that 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] that requires a permit as provided [hereunder shall be] under this section is 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.



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- (B) Judicial Review. Upon the department's refusal to issue a permit, the applicant for such permit [shall be] is 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] will 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] that requires a permit as provided hereunder [shall be] is 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] 9:00 a.m. and [six] 6:00 p.m. daily[.]; and
 - (ii) Place: The playing of such instruments [shall] must be restricted to [the] a facility especially constructed for such purpose, such as the bandstand at Kapiolani Park or other areas within the park that [shall be] are 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] must immediately be followed by a 15-minute break or every one hour of playing period [shall] must immediately be followed by a half-hour break; provided, that at no time [shall] may there be any continuous playing exceeding an hour.
- (D) Duration of Permit. The duration of a permit issued pursuant to subdivision (9) [shall not] cannot exceed one month.

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

- (10) Hang gliding[.];
- (11) Commercial activities, provided that the proposed commercial activities under the permit [shall be] are 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] may be issued for commercial activities, including permits



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for recreational stops by commercial tour companies, at Kailua Beach Park and Kalama Beach Park, except as otherwise provided in this chapter for commercial filming activities[;]. No permit may be issued for recreational stops by commercial tour companies at:

- (A) Waimanalo Beach Park, Kaiona Beach Park, Kaupo Beach Park, Makapuu Beach Park, and Bellows Field Beach Park; and
- (B) Waimanalo Bay Beach Park from 6:30 p.m. on Fridays through 6:30 a.m. on Mondays, and on all state and federal holidays; provided that no more than _____ permits per _____ may be issued for recreational stops by commercial tour companies at Waimanalo Bay Beach Park, and such permits may only be issued to commercial tour companies for recreational stops by tour vans or vehicles that seat no more than 15 passengers.

(12) Constructing, utilizing, placing, occupying, or in any other manner situating any tent.

- (b) Director to Promulgate Rules and Regulations. The director shall promulgate rules and regulations pursuant to HRS Chapter 91, to govern the use of said areas and facilities [which] that will:
- (1) Ensure maximum permissible use of said areas and facilities by appropriate distribution of users;
 - (2) Ensure proper, orderly and equitable use of areas and facilities through scheduling and user controls;
 - (3) Ensure protection and preservation of areas and facilities by not overtaxing facilities;
 - (4) Promote the health, safety and welfare of the users of said areas and facilities;
 - (5) Establish procedures for obtaining permits and revocation [therefor; or] thereof; and
 - (6) Recommend to the council fee schedules, based upon the cost of administration for each activity authorized under [paragraph (10) of this subsection.] subsection (a)(11)."



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SECTION 5. Section 10-1.6, Revised Ordinances of Honolulu 1990 ("Violation—Penalty"), is amended by amending subsection (d) to read as follows:

"(d) Penalty.

- (1) Except as otherwise provided in paragraph (2), any person convicted of a violation of any section or provision of this article [shall] will be punished by a fine of not more than \$500.00 or by imprisonment for not more than 30 days, or by both such fine and imprisonment.
- (2) Any person who violates or causes a vehicle to violate the provisions of the following sections [shall] will be fined not less than \$25.00, but not more than \$500.00:
 - (A) Section 10-1.2(a)(11);
 - (B) Section 10-1.2(b)(5);
 - (C) Section 10-1.2(g); [or]
 - (D) Section 10-1.2(h);
 - (E) Section 10-1.2(i); or
 - (F) Section 10-1.5."

SECTION 6. Within 90 days after the effective date of this ordinance, the Director of the Department of Parks and Recreation shall prepare and submit to the Council a draft bill that would amend Chapter 10, Article 2 of the Revised Ordinances of Honolulu 1990 ("ROH"), to propose a fee schedule, based on administrative costs, for permits issued to commercial tour companies for recreational stops at Waimanalo Bay Beach Park, pursuant to ROH Section 10-1.3(a)(11), and as provided under Section ROH 10-1.3(b)(6).

SECTION 7. 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.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 8 (2015), CD1

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SECTION 8. This ordinance takes effect upon its approval; provided that any permit issued prior to the effective date of this ordinance allowing recreational stops by commercial tour companies to take place at a park affected by this ordinance will continue to be valid until the permit expires.

INTRODUCED BY:

Ikaika Anderson

DATE OF INTRODUCTION:

February 11, 2015
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