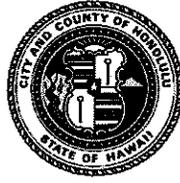


**OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

December 3, 2018

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

Dear Council Chair Martin and Councilmembers,

SUBJECT: Bill 6 (2018), Relating to Public Nuisances

The City Council and I have recognized the critical importance of our public sidewalks in providing clear and open passageways for pedestrians. The recently enacted sidewalk obstruction law (Bill 51(2018), CD2; Ordinance 18-34) is an example of our collective latest efforts to provide the agencies of the City and County of Honolulu with appropriate and effective tools to take back our sidewalks for the purpose for which they were and are intended – so that pedestrians can traverse them without encountering obstructions.

The stated purpose of Bill 6 (2018), Relating to Public Nuisances (“Bill 6”), is to “regulate nuisances on public sidewalks” and seeks to do so by way of an amendment to Section 29-16.6, Revised Ordinances of Honolulu 1990, as amended (“ROH”), which is a part of ROH Chapter 29, Article 16, the “Sidewalk Nuisance Ordinance” or “SNO.” Under the Sidewalk Nuisance Ordinance, objects on the sidewalks are deemed public nuisances and are subject to summary removal. There are three (3) exceptions to the prohibitions of the SNO, and Bill 6 effectively eliminates the first exception in only one geographic area - the Waikiki Special District. That exception pertains to objects smaller than 42” in length, 25” in width, and 43” in height (the “size exception”), which exception itself must meet certain conditions in order to apply. Neither the express language of Bill 6 nor the reports of the committees that considered the bill identify the reason for eliminating the size exception from only one geographic area in the City.

18DEC3 PM 3:09 CITY CLERK

The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
December 3, 2018
Page 2

While the oral and written testimony from the public consistently raised the issue of mobile kiosks in Waikiki, Bill 6 is much broader than that narrow application and, therefore, appears to be overly broad to address that issue. Given that Bill 6 prohibits much more than to prohibit mobile kiosks that fall within the size exception, and given that Bill 6 applies only to the Waikiki Special District, without justification, it presents significant legal concerns. Although I would have liked to have signed and implemented Bill 6 given the practical concerns mentioned in the public testimony, I am returning it to you with my veto.

I recognize that the proliferation of the unlawful commercial activities being conducted from the mobile kiosks is interfering with the free movement of pedestrians and harming the surrounding legitimate business community. I agree with the Council that we must take proactive steps to address this serious problem; however, even without Bill 6, the SNO already deems any mobile kiosk that interferes with public health and safety to be a nuisance subject to summary removal.

It also appears that operators of mobile kiosks in Waikiki are engaged in unlawful peddling in violation of the City's Peddling Ordinance, ROH Chapter 29, Article 6, and are thereby subject to a fine of \$100 to \$1,000 and up to 30 days in jail. I will continue to request the City's agencies to consistently enforce these and other laws.

With the enactment of Ordinance 18-34 (Bill 51(2018), CD2), which the business community testified should address the mobile kiosk issue, the passage of Bill 6 is unnecessary, and I believe that, with Ordinance 18-34 and other existing laws, we have strong and diverse tools available to address that concern.

I look forward to working with the Council to provide clear and unobstructed passageways on our public sidewalks island-wide. We must also be cognizant of the rights guaranteed to our citizens and not invite unnecessary and costly legal challenges with overbroad legislation. I believe we already have effective tools available and I am committed to addressing the particular problem with mobile kiosks through increased and consistent enforcement of our existing City laws.

For the reasons stated above, I am returning Bill 6 with my veto, and I respectfully urge you to sustain it.

Sincerely,



Kirk Caldwell
Mayor



A BILL FOR AN ORDINANCE

RELATING TO PUBLIC NUISANCES.

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

SECTION 1. The purpose of this ordinance is to regulate nuisances on public sidewalks.

SECTION 2. Section 29-16.6, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 29-16.6 Exceptions.

The prohibitions in this article shall not apply to the following:

- (1) An object or collection of objects smaller than 42 inches in length, 25 inches in width, and 43 inches in height, provided that:
 - (A) The object or collection of objects is attended to by an individual at all times;
 - (B) The object or collection of objects, or any portion thereof, does not extend into the roadway;
 - (C) The object or collection of objects does not obstruct the use of 36 inches in width of the sidewalk and does not obstruct the free movement of pedestrians;
 - (D) The object or collection of objects does not obstruct individuals from access to or egress from legally parked vehicles;
 - (E) The object or collection of objects does not interfere with other lawful activities taking place on the sidewalk and its placement complies with other provisions of this chapter; and
 - (F) The object or collection of objects does not otherwise threaten public health and safety.

Provided further than this exception (1) does not apply in the Waikiki Special District, as identified by Section 21-9.80-2.



A BILL FOR AN ORDINANCE

- (2) An object or collection of objects used in the performance of a government-approved public safety, maintenance or construction function; or
- (3) Tables or other portable outdoor furniture or items used for the purpose of displaying literature or other expressive material or otherwise directly facilitating expressive activities; provided that the tables, furniture, or items:
 - (A) Are attended to by an individual at all times;
 - (B) Do not extend into the roadway;
 - (C) Do not obstruct the use of 36 inches in width of the sidewalk and do not obstruct the free movement of pedestrians;
 - (D) Do not obstruct individuals from access to or egress from legally parked vehicles;
 - (E) Do not interfere with other lawful activities taking place on the sidewalk and comply with other provisions of this chapter;
 - (F) Do not otherwise threaten public health and safety; and
 - (G) Are not larger than five feet by two feet or ten square feet for each individual engaging in the expressive activity."

SECTION 3. 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 underscoring.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 6(2018)

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY

[Handwritten Signature]

DATE OF INTRODUCTION:

JAN 25 2018

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

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE

BILL 6 (2018)

Introduced: 01/25/18 By: TREVOR OZAWA Committee: BUDGET

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

Voting Legend: * = Aye w/Reservations

01/31/18	COUNCIL	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, SAFETY AND ECONOMIC DEVELOPMENT. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.
03/17/18	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
03/22/18	PUBLIC HEALTH, SAFETY AND ECONOMIC DEVELOPMENT	CR-114 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.
<u>CC-93 MARTIN - RE-REFERRAL OF BILLS, RESOLUTIONS AND COMMUNICATIONS.</u>		
03/28/18	COUNCIL/PUBLIC HEARING	CR-114 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON BUDGET. 8 AYES: ELEFANTE*, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. 1 ABSENT: ANDERSON.
04/04/18	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
04/18/18	BUDGET	CR-137 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.
04/25/18	COUNCIL	CR-137 AND BILL 6 (2018) WERE RECOMMITTED TO COMMITTEE ON BUDGET. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.
10/17/18	BUDGET	CR-346 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.
11/14/18	COUNCIL	CR-346 ADOPTED AND BILL 6 (2018) PASSED THIRD READING. 9 AYES: ANDERSON*, ELEFANTE*, FUKUNAGA, KOBAYASHI, MANAHAN*, MARTIN, MENOR*, OZAWA, PINE.

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.



GLEN I. TAKAHASHI, CITY CLERK



ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER