



Kapiolani Park Trustees

CITY AND COUNTY OF HONOLULU

HONOLULU, HAWAII 96813

KAPIOLANI PARK TRUSTEES

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

MINUTES

REGULAR MEETING
THURSDAY, APRIL 28, 2005

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

CALL TO ORDER

The meeting of the Kapiolani Park Trustees was called to order by Trustee Chair Djou at 2:04 p.m. with Trustees Dela Cruz, Garcia, Kobayashi, Marshall and Okino present. Trustees Apo and Cachola were not present at this juncture and Trustee Tam was excused.

STAFF PRESENT

Lori Wingard, Senior Advisor to Trustee Chair Djou
Douglas Chun, Analyst, Office of Council Services
Stan Kuniyuki, Attorney, Office of Council Services
Lori Sunakoda, Deputy Corporation Counsel, Department of the Corporation Counsel
assigned to the Kapiolani Park Trustees
Dawn Spurlin, Deputy Corporation Counsel, Department of the Corporation Counsel
assigned to the Committee on Parks
Bernice Mau, Committee Clerk, Office of the City Clerk

ORDER OF BUSINESS

APPROVAL OF MINUTES

The minutes of the September 7, 2004 meeting of the Kapiolani Park Trustees were approved as circulated.

AYES: DJOU (Chair), DELA CRUZ, GARCIA, KOBAYASHI, MARSHALL,
OKINO - 6.
NOES: None.
EXCUSED: APO, CACHOLA, TAM - 3.

At this juncture, Trustees Apo and Cachola arrived at the meeting.

FOR ACTION

Trustee Chair Djou announced that Resolutions KPT-1 and KPT-2 would be discussed at the same time as they both relate to the overall operations of Kapiolani Park.

1. RESOLUTION KPT-1
COMMERCIAL ACTIVITIES IN KAPIOLANI PARK
2. RESOLUTION KPT-2
MAINTENANCE OF KAPIOLANI PARK

Administration/Others Present

Lester Chang, Director
Mike Smith, Manager, Kapiolani Regional Park
Department of Parks and Recreation

Dawn Spurlin, Deputy Corporation Counsel

The following individuals testified in support of Resolutions KPT-1 and KPT-2:

- 1) Jack Gillmar, Past President, Kapiolani Park Preservation Society
- 2) Aletha Rebman, President, Kapiolani Park Preservation Society
- 3) Nancy Bannick, Director, Kapiolani Park Preservation Society
- 4) Lord Northfield
- 5) Michelle Matson, President, Kapiolani Park Advisory Council
- 6) Carol Hopkins

The following communications were circulated at the meeting and filed:

- M-1241 from Mary H. Y. Bahng, Deputy Attorney General, noting her concerns that the discussion on commercial activity at Kapiolani Regional Park is pending before the Court.
- M-1242 from Lord Northfield, submitting amendments to Resolution KPT-1 for consideration.

- M-1243 from Lord Northfield, submitting amendments to Resolution KPT-1 for consideration.
- M-1244 from Michelle Matson, submitting information relating to Resolutions KPT-1 and KPT-2 from former Managing Director Robert J. Fishman and the State Historic Preservation Division.
- M-1245 submitted by Alethea Rebman, photographs of Kapiolani Regional Park relating to the over-scheduling, overuse and commercial activity in the Park.

For the last five years, the Kapiolani Park Preservation Society (KPPS) has been challenging commercial activities held in Kapiolani Park. It is KPPS' position that the commercial activities in Kapiolani Park have been inappropriate. The Trustees have requested guidance from the Court on this issue. However, since the initial request, the former Administration has allowed Kapiolani Park to become a major commercial center by not following the rules set by the Department of Parks and Recreation.

Mr. Gillmar reminded Trustees that Kapiolani Park is a special park in that it is a Trust that was given to the City from the Republic of Hawaii. This Trust requires that the park remain free and open to all and not be monopolized by any particular group. It has recently come to the attention of KPPS that some sports entities want to place permanent backstops, goal posts and so forth in the park. Again, Mr. Gillmar reiterated that the Trust calls for the park to remain free and open to all.

In regards to the maintenance of the park, KPPS recommends that the responsibility be placed in one department rather than split between the Departments of Parks and Recreation and Enterprise Services and that the 16 vacant maintenance positions be filled.

Communication M-1245 contains photographs depicting many of the City's own rule violations at Kapiolani Park. KPPS feels that many of the problems in the park are a result of the Manager of Kapiolani Park not being allowed to apply the Trust requirements. For that reason, KPPS' position is that the Trustees need to step in and take action to rectify these violations.

Trustees raised concern with KPPS' disapproval of ethnic festivals that sell food and crafts at Kapiolani Park. KPPS' position is that ethnic festivals that bring culture to the community should be treated differently than for a for-profit organization and should be allowed. However, KPPS objects to commercial vendors participating at these cultural festivals selling items such as hot dogs and popcorn that have no connection to the ethnic event. In addition, cultural activities should be limited adhering to Kapiolani Park's carrying and maintenance capacity, which is regularly exceeded.

Another example of a commercial activity that KPPS feels should not be held at Kapiolani Park is the People's Farmer's Market. The Manager of Kapiolani Park, Mr. Smith, responded that he did not view the Farmers Market as a recreational use of the park; however, this was an ongoing activity when he became the Manager of the park. It is a very popular program and is held at the City's parks because of a demand for such service.

On the other hand, Director Chang considers the Farmers Market to be a passive recreation activity, although he acknowledged that there are a few vendors that are more commercial than homegrown. Director Chang agreed to poll residents in the Kapiolani Park area as to whether they like having the Farmers Market held at the park.

Ms. Matson, representing the Kapiolani Park Advisory Council, requested that the Trustees take a conservative interpretation of Act 53, which provides for the appropriate uses of Kapiolani Park under the Trust -- entertainment, competitions and exhibitions. She affirmed that many events at the park incorporate accessory sales to their events for the public's benefit and education such as food and ethnic crafts. However, there had been numerous commercialization violations allowed by stand-alone events and sales attractions for private profit and personal gains. These are the events that the Advisory Council is concerned with.

The Advisory Council also recommends that the City relocate their trucks from the nursery to under the overpass at the end of Kapahulu Avenue in order to provide public parking in the nursery area, thereby keeping Paki Avenue free from parked vehicles. The State Department of Transportation Services has agreed to the use of the area under the overpass for this purpose.

Director Chang noted he is very aware with much of the concerns expressed by the testifiers and that he is committed to only allowing permissible legal activities

at Kapiolani Park. Enforcement has been a challenge and effort will be spent to brief the promoters/users on the expectations of following the Department of Parks and Recreation's rules. It is his belief that educating people of the rules would greatly alleviate much of the abuse.

Director Chang agreed to monitor users of the park for habitual abusers, to establish proper sanctions and/or warnings and to enforce the Department's rules properly.

In regards to the Urban Forestry Division relocating their trucks, Director Chang is in opposition to this recommendation. It would be inefficient for the unit to be located away from the park. Staff is considerate of noise and trees are used to conceal trucks so as not to be an eyesore.

Kapiolani Park Manager Smith is reviewing the park's cycles of use in order to address over scheduling concerns. It is Director Chang's intent to build into this schedule time for the park to "breathe."

By way of background, Deputy Corporation Counsel Spurlin provided the following:

Trustees filed an appeal in 2003 asking the Court for direction on whether the art on the zoo fence and craft fair activities in the park are a permissible use of Trust lands. Ms. Spurlin has advocated in Court that although there is a commercial aspect, the commercial aspect is incidental to the recreation aspect of the activity, as many people like to go to craft fairs and view art on the zoo fence. The Court will be viewing whether the commercial aspect supersedes the recreational aspect. The State Attorney General has recently concluded their factual investigation and is preparing their report and recommendation for submittal to the Court. It is the State Attorney General's responsibility to represent all the beneficiaries of the Trust.

In regards to relocating the nursery, this issue was before the Court in 1991 and 1994. In both incidences, the Court ruled that the nursery operation is a permissible use of the park as long as the vehicles are for nursery use.

In response to the language in the "Be It Resolved" paragraph on page 2 of Resolution KPT-1, Ms. Spurlin noted that the language is too vague, as she does not know what is meant by "similar commercial involved events" as many sport activities have a commercial component, as they have food concessions.

In response to what entity has the final authority on the use of Kapiolani Park, Ms. Spurlin responded that Judge Chun's Order split the authority of the Trust between the Trustees and the Executive Branch. Responsibilities of the Trustees are limited to determining whether or not an activity is a park purpose and the overall management and operation is the responsibility of the Executive Branch. If the Trustees believe the activity is not a park purpose, they can step in and it would be binding on the Executive Branch.

It was suggested that the word "commercialization" be clarified in Resolution KPT-1.

Trustee Chair Djou recommended deferral of action on KPT-1 and KPT-2 pending the Attorney General's report to the Court.

Action on Resolutions KPT-1 and KPT-2 were deferred.

AYES: APO, CACHOLA, DJOU, DELA CRUZ, GARCIA, KOBAYASHI,
MARSHALL, OKINO – 8.
NOES: None.
EXCUSED: TAM – 1.

DISCUSSION ONLY

3. KPT CONCERNS REGARDING HOUSE BILL 128 HD2 SD2, RELATING TO BEACH SERVICE CONCESSIONS, THAT IS CURRENTLY IN CONFERENCE COMMITTEE AT THE HAWAII STATE LEGISLATURE.

Administration/Others Present

Lester Chang, Director
Mike Smith, Manager, Kapiolani Regional Park
Department of Parks and Recreation

The following individual commented on this matter:

Michelle Matson, Kapiolani Park Advisory Council

The following individual indicated a desire to speak:

Alethea Rebman, Kapiolani Park Preservation Society

The following communication was circulated at the meeting and filed:

M-1246 from Adrian K. Kamali'i, C&K Beach Service, Inc. providing comments on the subject matter.

By way of background, Trustee Chair Djou noted that Bill 128, HD2, SD2 is currently pending before the State Legislature. This Bill allows commercial activities relating to beach boy operations along Waikiki. However, the way it is currently drafted, it includes San Souci Beach, which is within Kapiolani Trust lands, which is outside the jurisdiction of the State. It is Senate Chair Conferee Kokubon's intention to remove the portion referencing San Souci Beach.

However, Council Chair Dela Cruz moved to allow Trustee Chair Djou to send a letter to the Legislature requesting the removal of San Souci Beach from Bill 128 should it not be removed at the next Senate Conference meeting scheduled for April 29, 2005. Seconded by Trustee Marshall and hearing no objections by the 7 trustees present, it was so ordered.

Trustee Cachola also requested that the Senate Conferee Chair be requested to obtain a legal opinion from the State Attorney General on this matter.

4. EXECUTIVE SESSION

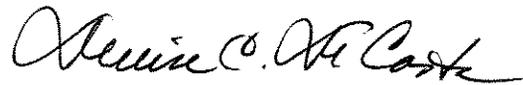
There was no Executive Session.

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ADJOURNMENT

There being no further business, the meeting was adjourned at 3:09 p.m.

Respectfully submitted,



DENISE C. DE COSTA
City Clerk

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DATE APPROVED

September 6, 2007