

COUNCIL OF THE COUNTY OF MAUI

# PARKS AND RECREATION COMMITTEE

August 20, 2002

Committee  
Report No. 02-104

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Parks and Recreation Committee, having met on June 5, 2002 and July 31, 2002, makes reference to a Miscellaneous Communication dated May 21, 2001, from the County Clerk, referring the matter relating to fees for ocean recreational activity business permits (permits) to your Committee (referred by your Budget and Finance Committee through Committee Report No. 01-78, As Amended).

Your Committee notes that it previously reported on this matter through Committee Report No. 02-51. In that report, your Committee recommended that Resolution No. 02-54, entitled "URGING THE DEPARTMENT OF FINANCE TO DISCONTINUE THE ISSUANCE AND RENEWAL OF OCEAN RECREATIONAL ACTIVITIES BUSINESS PERMITS AT CERTAIN PARKS IN KIHEI", be adopted. At its meeting of April 5, 2002, the Council adopted Committee Report No. 02-51.

Your Committee notes that it is in receipt of written testimony from 11 individuals providing comments and recommendations for regulating permits and operations at County beach parks.

By correspondence dated March 28, 2002, your Committee Chair requested that the Director of Finance provide a list of current permit holders authorized to operate at Cove Park, including permit holders that have been approved to conduct business at multiple County beach parks.

By correspondence dated April 4, 2002, the Director of Finance provided a listing of permits authorized to operate at Cove Park and multiple County beach parks.

By correspondence dated May 1, 2002, your Committee Chair submitted information to the Budget and Finance Committee, relating to the status of the "working group" created by the Department of Parks and Recreation to provide

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recommendations for regulating operations of ocean recreational activity businesses at County beach parks.

By correspondence dated May 6, 2002, your Committee Chair transmitted a report dated May 2, 2002, entitled "RULES AND REGULATIONS FOR SURF SCHOOL OPERATIONS IN MAUI COUNTY BEACH PARKS", submitted by the Maui Association of Surf Schools (MASS).

At its meeting of June 5, 2002, your Committee met with the Director of Parks and Recreation, the Director of Finance, and a Deputy Corporation Counsel.

Your Committee received testimony from 16 individuals, 7 of whom represented the surfing industry and requested that consideration be given to regulate the number of individuals in the water, require certification of instructors, allow self-regulation, and lift the moratorium on the issuance of new permits. Three of the testifiers represented the SCUBA industry and stated that regulations are already in place to monitor their instruction. Two testifiers stated that more stringent controls must be established for regulating commercial operations at beach parks. The other six testifiers suggested that self-regulation and operational controls be kept to a minimum, and the creation of an assessment fund for park enhancements be established.

Your Committee received the following items at the meeting:

1. A document entitled "Maui Surfing Association Official Instructors Association Manual", submitted by Steve Omar.
2. Correspondence dated June 4, 2002, from Theresa A. Young, Maui Mermaid Scuba, relating to recommendations for operation of ocean recreational activity businesses.
3. Correspondence dated June 5, 2002 from Renee Umberger, President, Octopus Reef Dive Training and Tours, recommending the lifting of the moratorium on the issuance of permits.

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Your Committee received a status report from the Director of Finance regarding the moratorium on the issuance of permits and the progress of a proposed bill that would transfer permit authority to the Department of Parks and Recreation. He noted that the moratorium was established to limit overcrowding at County beach parks and because the popularity of certain ocean recreational activities have placed significant demands on our facilities. By controlling the issuance of new permits, the Departments of Finance and Parks and Recreation will have an opportunity to analyze the demand of certain beach parks. He indicated that the moratorium will remain in effect until the Department of Parks and Recreation is granted authority to issue permits. He further stated that permits are being renewed only to December 31, 2002. The purpose of these efforts is to: 1) create consistency so that all permits terminate on the same date; and 2) give the Department of the Corporation Counsel an opportunity to draft the transfer of authority legislation, which will allow the Department of Parks and Recreation to issue permits. Furthermore, he indicated that no new permits are being issued at this time.

Your Committee also received comments from the Director of Parks and Recreation. He stated that controls must be established for the operation of businesses at County beach parks to prevent the overcrowding that has occurred at Cove Park. He stated that carrying capacity, certification of instructors, drafting of guidelines for regulating commercial activity, and enhanced enforcement are vital to creating a cooperative atmosphere at County beach parks. He further emphasized the need to receive comments from the general public for creating operational standards at beach parks. He also stated that the use of Water Safety Officers for assisting in enforcement could enhance efforts at the beach parks.

Your Committee noted that the general public needs to be given the opportunity to comment on regulations for operations of permits at County beach parks. Your Committee also expressed a desire to have the proposed bill, transferring the authority for issuance of permits, to your Committee before the end of the year.

Your Committee deferred the matter pending further discussion.

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By correspondence dated July 25, 2002, the Director of Finance transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY PERMITS". The purposes of the proposed bill are to: 1) clarify the use and access of County parks by commercial businesses; 2) make clear the authority of the Director of Finance to utilize his discretion for the issuance of business permits at parks where such activity may conflict or interfere with the lawful use of the park; 3) allow no commercial business to operate at Cove and Kalama Parks; 4) restrict commercial business activity at County parks on Sundays; 5) grant the Director of Finance the authority to issue permits for any specified period not to exceed one year; and 6) revise miscellaneous and nonsubstantive provisions of the ordinance.

At its meeting of July 31, 2002, your Committee met with the Director of Parks and Recreation, the Director of Finance, the Assistant Chief of Police, and a Deputy Corporation Counsel.

Your Committee received testimony from eight individuals. One testifier requested that no businesses operation occur at Hookipa Beach Park. One testifier suggested that Council actions should encourage growth for small business and the enforcement of existing regulations prior to enacting new ordinances. One testifier requested that Section 5.24.030.F, relating to Issuance or Denial of Permit--Appeal, be removed from the proposed bill. Two testifiers requested that instructors be certified and limits be established for the number of individuals allowed in the ocean during instruction. Three testifiers requested that the moratorium for the issuance of permits be lifted.

Your Committee received the following items at the meeting:

1. A revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS", submitted by the Director of Finance. The purposes of the proposed bill are to: 1) clarify the use and access of County parks by commercial businesses; 2) make clear the authority of the Director of Finance to utilize his discretion for issuance of business permits at parks where such activity may conflict or interfere with the lawful

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use of the park; 3) grant the Director of Finance the authority to issue permits for any specified period not to exceed one year; and 4) revise miscellaneous and nonsubstantive provisions of the ordinance.

2. Written testimony from four individuals providing recommendations for the enforcement of existing regulations and comments regarding establishing operational standards for ocean recreational activity businesses at County beach parks.

Your Committee received an overview of the revised proposed bill from the Director of Finance. He stated that the proposed bill is a “housekeeping” measure that will allow the Director to issue permits for any period of time, up to one year, and allow the prorating of fees. The proposed bill also clarifies the Director’s authority for regulating the issuance of permits at County parks that may be impacted by commercial activity. He further indicated that the revised proposed bill eliminates two initial provisions that were included in the proposed bill, which would prohibit commercial activity at Cove Park and Kalama Park and restrict business activity on Sundays.

The Deputy Chief of Police stated that the Department is ready to provide the enforcement necessary to assist with maintaining order at County beach parks. He further stated that once an ordinance is passed, which will set standards for operations at beach parks, the Department will be available to help implement the regulations.

Your Committee noted that representatives from the various ocean recreational activity businesses have been working to develop recommendations for operational standards at County beach parks. Your Committee indicated that the recommendations generated by this “working group” will assist in the creation of guidelines to regulate commercial activity at beach parks. Your Committee further noted that the revised proposed bill, introduced by the Director of Finance, will assist with the administration of permits and will not impact the potential recommendations that are anticipated to be submitted by the “working group”.

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The Director of Finance noted that should an ocean recreational activity business permit be issued for less than one year, the proposed revisions to Section 5.24.050.A will authorize the Director to prorate the permit fees.

In response to an inquiry by your Committee, the Director of Parks and Recreation stated that he is hoping to receive the recommendations from the "working group" within the next couple of months. Once the recommendations are received, they will be utilized in drafting a proposed bill that will transfer the issuance and regulatory powers of permits from the Department of Finance.

The Director of Finance stated that the provisions that would have eliminated the issuance of permits at Cove and Kalama Park and restricted commercial use of parks on Sunday were removed from the revised proposed bill because the Director will have the authority within the proposed revisions to control such commercial activity. Furthermore, he stated that it is not his intention to issue or renew permits at Cove and Kalama Parks.

As a result, your Committee voted to recommend passage of the revised proposed bill on first reading.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality, by the Department of the Corporation Counsel.

Your Parks and Recreation Committee RECOMMENDS that Bill No. \_\_\_\_\_ (2002), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY PERMITS", PASS FIRST READING and BE ORDERED TO PRINT.

Adoption of this report is respectfully requested.

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**JO ANNE JOHNSON** Chair

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**MICHAEL J. MOLINA** Member

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**ROBERT CARROLL** Vice-Chair

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**CHARMAINE TAVARES** Member

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**DANNY A. MATEO** Member