

COUNCIL OF THE COUNTY OF MAUI
**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

March 18, 2016

**Committee
Report No. _____**

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

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on October 13, 2015, November 3, 2015, November 17, 2015, December 1, 2015, December 15, 2015, and February 2, 2016, makes reference to County Communication 15-237, from the Budget Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 13.04, MAUI COUNTY CODE, AND ESTABLISHING A NEW CHAPTER 13.04A, MAUI COUNTY CODE, RELATING TO PARKS AND RECREATIONAL FACILITIES, AND AMENDING SECTION 6.04.090, MAUI COUNTY CODE, RELATING TO ANIMAL CONTROL OFFICERS."

The purpose of the proposed bill is to revise provisions dealing with the regulation and management of County parks and recreational facilities.

The proposed bill repeals Chapter 13.04, Maui County Code, and establishes a new chapter relating to the use of parks and recreational facilities.

Your Committee notes the proposed bill was requested by the Department of Parks and Recreation as part of its initiative to restructure activities related to parks and recreational facilities.

The proposed bill also adds Waiale Park in Wailuku to the list of County parks where consumption of alcohol is prohibited, except as authorized by permit, license, lease, or concession.

COUNCIL OF THE COUNTY OF MAUI
ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE

Page 2

Committee
Report No. _____

Additionally, the proposed bill streamlines provisions regarding refreshment concessions.

The Deputy Director of Parks and Recreation informed your Committee the proposed bill is the culmination of the Department's two-year process of considering public and departmental concerns with the permitting process and facility regulations.

The Deputy Director noted the proposed bill establishes the following four permit categories: Community Class, General Use, Government, and Special Events.

Your Committee recommended revisions to the proposed bill relating to the prioritization of events when there is competition for exclusive use of a park or facility. Under the revised proposed bill, events sponsored by the Department of Parks and Recreation have a higher priority than events sponsored by other County agencies or other entities. This distinction included refining the definitions of "County co-sponsored events" and "Department sponsored" events.

Your Committee noted equipment rental for events off of County property is not authorized. However, your Committee recognized the need to make County equipment available for rental for certain events.

After careful deliberation, your Committee decided to revise the proposed bill to allow equipment to be taken off County property; and to allow the Director: (1) to rent Department equipment, including large equipment, such as the showmobile stage and mobile bleachers, to any permittee or County co-sponsored entity; and (2) to rent small equipment, such as stage platforms, bleachers, and picnic tables, to any permittee or County co-sponsored entity and any nonprofit organization which serves the community.

Your Committee also considered provisions in the proposed bill prohibiting the establishment or maintenance of feral animal colonies at

COUNCIL OF THE COUNTY OF MAUI

ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE

Page 3

**Committee
Report No.** _____

any County park or recreational facility. A representative of the Maui Humane Society advised your Committee an outright ban on feeding feral animals would not be realistic or effective.

Your Committee decided to revise the proposed bill to prohibit the establishment of feral animal colonies, but allow the management of existing colonies authorized by a permit, license, lease, or contract.

Your Committee supported the revised proposed bill because it clarifies policies and will assist the Department in fairly and efficiently serving the public's recreational needs.

Your Committee voted 6-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Guzman, Vice-Chair Cochran, and members Couch, Crivello, Hokama, and White voted "aye." Committee member Victorino was excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Economic Development, Energy, Agriculture, and Recreation Committee RECOMMENDS the following:

1. That Bill _____ (2016), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 13.04, MAUI COUNTY CODE, AND ESTABLISHING A NEW CHAPTER 13.04A, MAUI COUNTY CODE, RELATING TO PARKS AND RECREATIONAL FACILITIES, AND AMENDING SECTION 6.04.090, MAUI COUNTY CODE, RELATING TO ANIMAL CONTROL OFFICERS," be PASSED ON FIRST READING and be ORDERED TO PRINT; and

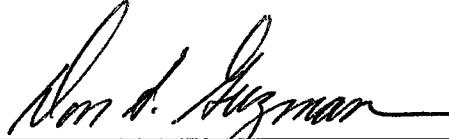
COUNCIL OF THE COUNTY OF MAUI
**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

Page 4

**Committee
Report No.** _____

2. That County Communication 15-237 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



DON S. GUZMAN, Chair

ear:cr:16042aa:scb

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE REPEALING CHAPTER 13.04,
MAUI COUNTY CODE, AND ESTABLISHING A
NEW CHAPTER 13.04A, MAUI COUNTY CODE,
RELATING TO PARKS AND RECREATIONAL FACILITIES, AND
AMENDING SECTION 6.04.090, MAUI COUNTY CODE,
RELATING TO ANIMAL CONTROL OFFICERS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Title 13, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 13.04A

PARKS AND RECREATIONAL FACILITIES

Sections:

Article I. General Provisions

- 13.04A.010 Purpose.
- 13.04A.020 Applicability and scope.
- 13.04A.030 Definitions.
- 13.04A.040 Operating policy.
- 13.04A.050 Reporting.

Article II. Prohibitions

- 13.04A.070 General prohibitions applicable to all parks and recreation facilities.
- 13.04A.080 Alcohol prohibition for certain parks and recreational facilities.

Article III. Permits

- 13.04A.090 Policy.
- 13.04A.100 Procedure.

- 13.04A.110 Permittee liability.
- 13.04A.120 Appeals.
- 13.04A.130 Department equipment rental.
- 13.04A.140 Refreshment concessions.

Article IV. Camping

- 13.04A.200 Camping areas.
- 13.04A.210 Camping permits.
- 13.04A.220 Camping fees.
- 13.04A.230 Curfew.

Article V. Rules and Regulations of the Department

- 13.04A.240 Promulgation.

Article VI. Citations, Trespass, Penalties

- 13.04A.250 Citations.
- 13.04A.260 Trespass.
- 13.04A.270 Penalties.

Article VII. Commercial Ocean Recreational Activity

- 13.04A.280 Purpose; single activity.
- 13.04A.290 Prohibitions.
- 13.04A.300 Permit requirement.
- 13.04A.310 Permit application – issuance – denial – appeal.
- 13.04A.320 Permit conditions.
- 13.04A.330 Permit term – suspension – revocation.
- 13.04A.340 Nontransferable.
- 13.04A.350 Inspection of permit.
- 13.04A.360 Penalties.
- 13.04A.370 Ocean recreational activity fund.

Article I. General Provisions

13.04A.010 Purpose. The purpose of this chapter is to establish policies and procedures regarding the use of County parks and recreational facilities in order to preserve and protect them and their recreational, cultural, environmental, social, education, historical, and economic benefit to the community.

13.04A.020 Applicability and scope. A. This chapter applies to all parks and recreational facilities within the County except those referenced in chapters 13.16 and 13.20.

B. If any provision of this chapter conflicts with any other ordinance or statute, the stricter provision shall govern.

C. If any section, sentence, clause, or phrase of this chapter, or its application to any person, is held to be invalid by a court of competent jurisdiction, the remaining portions of this chapter, or the application of this chapter to other persons, shall not be affected.

D. The director shall administer and implement this chapter.

13.04A.030 Definitions. As used in this chapter, unless the context otherwise requires:

“ADA” means the Americans with Disabilities Act of 1990, as amended.

“Advertising material” means signage, stickers, posters, flyers, brochures, banners, videos, displays, or any other means of promotion, including those described in chapter 16.13.

“Applicant” means a person eighteen years of age or older, a business, group, organization or association that requests the use of a park or recreational facility for activities or events specified within this chapter.

“Application” means a form provided by the department that must be submitted to initiate a permit request.

“Application fee” is a nonrefundable fee charged to process an application.

“Athletic field” means an enclosed area within a park that is appropriately marked and set aside to be primarily used for playing a game or sport, such as a baseball field, basketball court, soccer field, tennis court, or other field or court.

“Authorized agent” means an executive director or officer of a corporation, or a general partner of a general or limited partnership, or an active member of an unincorporated group or organization, who provides the director with notarized written authority in order to represent a corporation, partnership, group or organization.

“Authorized representative” means any person designated to act for the director.

“Business” means any enterprise or establishment, such as a sole proprietorship, joint venture, partnership, corporation, fraternal organization, club, or any other profit or nonprofit entity, including any employee of the business who is acting on its behalf.

“Business location” means a permanent, fixed place of business not including a place that consists solely of a post office

box, that is identifiable by a tax map key number and street address in the County.

“Camper” means a person who remains, or intends to remain, at a park or recreational facility to use the facility as overnight accommodations, as permitted by section 13.04A.210.

“Camping” means the use and occupation of any park or recreational facility by a camper, as permitted by section 13.04A.210.

“Cigar” means any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco.

“Cancellation fee” is the forfeiture of deposits for failure to provide timely notice of cancellation, or for failure to use any issued permit pursuant to Table 2 in section 13.04A.100.

“Commercial activity” means an act whereby a person, organization, or entity receives a benefit, or a promise to receive a benefit, by providing goods or services to another person.

“Commercial ocean recreational activity” means engaging in, or providing instruction or guidance regarding the use of equipment in any pursuit that is primarily conducted in or on the ocean, such as kayaking, snorkeling, scuba diving, surfing, kite surfing, Hawaiian outrigger canoeing, and windsurfing; excluding any pursuit requiring an operator to hold a license or permit from the State Department of Land and Natural Resources, Division of Boating and Ocean Recreation, or the United States Coast Guard. Engaging in and providing instruction or guidance to any patron regarding the use of equipment in the same pursuit shall constitute no more than one ocean recreational activity.

“Community center” means a County-operated facility generally utilized as a gathering place for meetings, socials, training, and other activities.

“Community class permit” means lessons, instruction or classes offered to the general public and conducted by an instructor approved by the department. Class participation charges or fees are allowed within the limits established by the department. Temporary refreshment concessions in accordance with section 13.04A.140 are prohibited.

“Community league” means a league organized by a person or organization which may assess dues, registration or participation fees confirmed by the director to be used solely to offset operating expenses such as equipment, insurance, officiating, and permit fees. Community leagues shall obtain a general use permit issued by the Department.

“Consume any intoxicating liquor” means to possess any bottle, can, or other receptacle containing any intoxicating liquor, as defined in section 281-1, Hawaii Revised Statutes, which has been opened, had its seal broken, or had its contents partially removed;

except that this definition does not apply to the possession of a container:

1. In the trunk of a vehicle; or
2. If the vehicle does not have a trunk, in another area of a vehicle not normally occupied by the driver or a passenger, not including the vehicle's utility or glove compartment.

"County co-sponsored functions" means activities, programs, or events sponsored by the County in conjunction with another person.

"County property" means any real or personal property owned by, or under the management or control of, the County.

"Department" means the department of parks and recreation.

"Department equipment" means any electrical, electronic, or mechanical device, or system, or athletic equipment rented by the department pursuant to a permit issued by the department. Rental fees shall be set forth in the annual budget ordinance.

"Department league" means a league organized and operated by the department that does not assess registration or participation fees.

"Department sponsored" means functions, activities, programs, or events solely sponsored by the department, or together with a person or organization.

"Deposit" means a monetary assessment placed with the department as security to ensure the proper use, maintenance, and restoration of parks and recreational facilities, including the return of keys and equipment rented pursuant to a permit.

"Designated parks or recreational facilities" means parks or recreational facilities under the control or management of the department and available for use pursuant to a permit issued by the department.

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

"Dog park" means an enclosed area within a park designated for dogs to run free without a leash.

"Electronic smoking device" means any electronic product that can be used to simulate smoking in the delivery of nicotine or other substances to the person inhaling from the device, such as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe; or a component of the device or related product.

"Exclusive use" means the use of a park or recreational facility pursuant to a permit issued under this chapter which prohibits or restricts the availability of that park or recreational facility to others.

"Fee" means a financial payment by the permit applicant assessed by the department as specified in the annual budget ordinance, including an application fee, cancellation fee, permit fee, and registration fee.

“Fundraising activity” means an event or activity whose purpose is gathering proceeds or resources for the cause pursuant to a permit issued by the department.

“General use permit” means a permit issued under this chapter for an event or activity for which dues, registration fees, or participation fees may not be assessed, or donations accepted; except that the term includes a permit issued under this chapter for which a youth league, ADA organization, or senior citizen organization may assess fees to offset operating expenses.

“Gymnasium” means a recreational facility utilized for indoor athletic activities.

“Government permit” means a permit issued under this chapter for an event or activity organized and conducted by the County, or another governmental unit, for which no revenue may be generated.

“Intoxicating liquor” means the same as the term is defined in section 281-1, Hawaii Revised Statutes.

“Law enforcement officer” means the same as the term is defined in section 710-1000, Hawaii Revised Statutes.

“League” means an organized group of teams or persons that compete against each other over a period of thirty days or longer, including a community league, department league, partnership league, and recreational league.

“League schedule” means a schedule of competitive activities that lists opposing teams or persons, and dates and times of competition within a specified time period.

“Non-exclusive use” means the use of a park or recreational facility pursuant to a permit issued under this chapter which does not prohibit or restrict the availability of that park or recreational facility to others.

“Nonprofit entity” means an entity approved by the Internal Revenue Service as tax-exempt under section 501(c) of the Internal Revenue Code, and which complies with all other requirements of federal, State, and County law regulating nonprofit organizations.

“Park” means a public area owned and operated by the County that is used for recreational pursuits, such as a park roadway, parking area, playground, athletic field, beach right-of-way, tennis court, and recreational area under the control, management, and operation of the department.

“Partnership league” means a league organized by a youth, senior, or ADA organization which may assess dues, registration fees, or participation fees confirmed by the director to be used solely to offset operating expenses, such as equipment, insurance, officiating, and permit fees. Partnership leagues shall obtain a general use permit issued by the department.

“Patron” means a person who contracts to participate in an ocean recreational activity.

“Permit” means written authorization by the director to reserve:

1. A specific park or recreational facility, or a portion thereof, for an event or activity which restricts the general public’s use of the reserved area during the permitted event, activity, or equipment use; or

2. Department equipment.

“Permittee” or “permit holder” means a person who has received written authorization to use a park, recreational facility, or equipment through the issuance of a permit pursuant to this chapter.

“Permit fee” is a non-refundable fee required prior to issuance of any permit under this chapter. All permit fees must be paid by the applicant. (See Table 1 in section 13.04A.100.)

“Personal mobility device” means a mobility aid belonging to any class of multi-wheeled devices and designed for and used by persons with a disability, whether the device is operated manually or by a power supply.

“Recreational facility” means any building or other physical structure located in, owned, and operated by the County, such as a swimming pool, gymnasium, community center, or pavilion used for recreational purposes and under the control, management, and operation of the department.

“Recreational league” means a league organized by the department which assess registration or participation fees used solely to offset operating expenses such as equipment, officiating, and expenses through appropriation for recreational programs or leagues in the annual budget ordinance.

“Registration fee” is a non-refundable fee required to participate in programs, services, or instructional classes operated by the department.

“Rules” means administrative rules of the department adopted pursuant to section 13.04A.240 that implement, interpret, or prescribe policy, procedure, or practice as necessary to carry out the requirements of this chapter.

“Smoke” or “smoking” means inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar or pipe or the use of an electronic smoking device.

“Special events permit” means a permit for events, activities, fundraising activities, political fundraisers, or tournaments, determined to require a permit, but which do not meet other permit requirements.

“Tobacco product” means tobacco in any form, other than cigarettes, that is prepared or intended for consumption or for

personal use by humans, including cigars and any substitutes thereof other than cigarettes that bear the semblance thereof, snuff, chewing or smokeless tobacco, and smoking or pipe tobacco.

“Tournament” means a method of determining the champion or winner in a recreational activity within a pre-determined time period.

“Vendor” means a person or organization authorized to participate in a permitted event or activity to sell goods, products, or services at parks or recreational facilities.

“Visiting swim team” means a swim team not from the County.

“Youth center” means any building, structure, or facility, including all necessary attendant or related facilities and equipment, that is owned or operated by a nonprofit entity or by the County for the exclusive use by the youth of the community that promotes the health, safety, or general welfare of youth.

13.04A.040 Operating policy. A. General policy. Unless otherwise permitted by the director, all parks and recreational facilities shall be open to the public on a non-exclusive, first-come, first-served basis, during designated hours established by the director. The opening and closing hours for each park and recreational facility shall be posted therein. Any exclusive use requires a permit.

B. Exceptions.

1. Closed Areas. Any park or recreational facility or section thereof may be closed to the public by the director at any time when the director finds such to be reasonably necessary for the maintenance of property or for the protection, health, safety, or welfare of the public. Closed areas shall be reported pursuant to section 13.04A.050(B).

2. Restricted facilities. Community centers or facilities which require special maintenance.

C. Director’s authority. The director shall determine whether events or activities are compatible with the purpose for which any park or recreational facility was designed.

13.04A.050 Reporting. A. Annual reporting. On or before July 15 of each year, the director shall transmit to the council a list of all department sponsored activities, whether revenue generating or non-revenue generating, and any activities extending beyond five consecutive days, which have taken place between July 1 and June 30 of the previous fiscal year. These reports shall include:

1. The purpose of each event or activity.
2. The reasons for department sponsorship.
3. The organization or entity that conducted the activity.

4. The period of time over which the activity took place.
5. The location of the activity.
6. A breakdown of events, distinguishing those free to the public or requiring admission charges.

B. Special reporting. Upon finding that an area should be closed for maintenance of property or for the protection of the health, safety, or welfare of the public pursuant to section 13.04A.040, the director shall state in writing the reasons for the closing of the park or recreational facility and shall transmit such reasons to the council within ten days from the date of the closing. Upon request of the council, the director shall file bi-weekly status reports with the council outlining the current status of the problem within the park or recreational facility, any actions taken to minimize the problem, effectiveness of actions taken, and any proposed future actions contemplated to be taken until such time as the park or recreational facility is reopened.

Article II. Prohibitions

13.04A.070 General prohibitions applicable to all parks and recreation facilities. A. Within the limit of any park or within any recreational facility, it is unlawful for any person to:

1. Throw or dispose of any refuse or any waste material except in a receptacle designated for such purpose.
2. Destroy, injure, deface, or remove in any manner any public structure, sign, equipment, monument, or device.
3. Discharge firearms, air rifles, or spring guns, except at a range established and regulated for that specific purpose.
4. Allow any animal to enter or remain within any park except as provided in subsection D.
5. Bring animals into recreational facilities, excluding outdoor pavilions, except for guide, signal/hearing, and service dogs, as defined in section 6.05.010.
6. Establish feral animal colonies.
7. Bring into or possess commercial shopping carts, whether attended or not.
8. Defecate or urinate on the grounds or improvements of any park or recreational facility, except in properly functioning toilets or urinals in public restrooms.
9. Engage in smoking or the use of tobacco products.

10. Abandon, store, or leave personal property unattended in any pavilion, dugout, bathroom, or other structure.

11. Abandon any vehicle for a period in excess of twenty-four hours.

12. Sleep or lie on picnic tables, or place personal bedding on picnic tables.

13. Conduct any rummage or second-hand item sales.

B. Except as otherwise authorized by permit, license, lease, or contract issued in accordance with this code, within the limits of any park or recreational facility, it is unlawful for any person to:

1. Be present during designated closed hours for that park or recreational facility, or between the hours of 10:00 p.m. and 6:00 a.m., or when closed to the public pursuant to section 13.04A.040(B)(1).

2. Distribute, post, or place any commercial handbill, circular, notice, or other advertising material.

3. Wash, polish, or repair cars or other vehicles.

4. Store, repair, or condition any boat, canoe, raft, or other vessel.

5. Park or operate any vehicle on grassed or sand areas with the exception of a personal mobility device.

6. Use or operate loudspeakers.

7. Dance on any gymnasium floor.

8. Engage in archery.

9. Kindle, build, maintain, or use any fire other than in a grill or hibachi.

10. Display or set off fireworks.

11. Engage in commercial activity, including catering or other commercial food distribution.

12. Provide classes, lessons, teaching, or instruction.

13. Bring into, possess, or dispose of any human or animal remains.

14. Feed any animal or animals, or stage any food or water for any animal or animals, except as provided in subsection D.

15. Manage feral animal colonies. Any colony management authorized by a permit, license, lease, or contract issued in accordance with this code must be designed to reduce and eliminate the colony.

16. Consume any intoxicating liquor:

a. Between the hours of 10:00 p.m. and 6:00 a.m.

b. At any time in any public restroom.

c. Within a one thousand five hundred foot radius of the boundary of any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school, or youth center, between the hours of 6:00 a.m. and 10:00 p.m., except on weekends, State and County holidays.

C. The director may designate, by posting signs, areas where the following activities are not permitted within any park or recreational facility:

1. Throwing, casting, rolling, catching, kicking, or striking any object, such as Frisbees, discs, boomerangs, baseballs, tennis balls, footballs, soccer balls, basketballs, croquet balls, bowling balls, golf balls, or any other ball or similar object.

2. Riding on roller skates, skate boards, bicycles, mopeds, scooters, or similar devices with wheels.

D. Animals. The director is authorized to set aside areas for horse riding, animal shows, dog parks, and dog obedience classes and trials. The following restrictions apply to all parks and recreational facilities unless specifically stated otherwise.

1. The owner or handler of any animal shall be responsible for the actions of their animal.

2. The owner or handler of any animal shall not tie the animal to an object.

3. Pet owners must pick up animal feces produced by their pet and dispose of same in a proper trash receptacle.

4. Dogs outside the confines of a dog park shall be secured by a leash or lead of not more than six feet in length held by a responsible person at all times.

5. Dogs, except for guide, signal/hearing, and service dogs, as defined in section 6.05.010, are prohibited on athletic fields.

6. A dog deemed dangerous under chapter 6.04 shall not be allowed, including in any dog park.

7. No one shall feed any animal or animals, or stage any food or water for any animal or animals, unless authorized per 13.04A.070(B)(14), provided that pet owners may provide water and training treats for their pets.

8. New feral animal colonies shall not be established. Only existing colonies may be maintained as authorized per 13.04A.070(B)(15).

E. Motor vehicles. The director may prohibit or restrict the operation or parking of motor vehicles.

F. Any other use or activity may be permitted by the director in accordance with the terms of this chapter and the rules of the department.

13.04A.080 Alcohol prohibition for certain parks and recreational facilities. Except as otherwise authorized by permit, license, lease, or concession issued in accordance with this code, it is unlawful for any person to consume any intoxicating liquor while within the boundaries of the following parks:

1. Kalama Park, located at 1900 South Kihei Road, Kihei, Maui, Hawaii, and Cove Park, located at 2120 Iliili Road, Kihei, Maui, Hawaii. The land comprising Kalama Park and Cove Park is identified in State Executive Order No. 854, as amended by State Executive Order No. 1184, as the land set aside for public park purposes, to be under the control and management of the County.

2. South Maui Community Park, located at 1501 Liloa Drive, Kihei, Maui, Hawaii.

3. Keopuolani Park, located in Central Maui, along Kanaloa Avenue, provided that this prohibition shall not apply to the Maui Arts & Cultural Center.

4. Kamehameha Iki Park, located in Lahaina, Maui, Hawaii. The land comprising of Kamehameha Iki Park is identified in State Executive Order No. 2771.

5. Malu Ulu O Lele Park, located in Lahaina, Maui, Hawaii. The land comprising of Malu Ulu O Lele Park is identified in State Executive Order No. 52, 3430 and 2889.

6. Honokowai Beach Park, located on Lower Honoapiilani Road, Lahaina, Maui, Hawaii, and identified in State Executive Order No. 2029 as the public land set aside to be under the control and management of the County, and further identified as tax map key number (2) 4-4-001:046, and further comprising tax map key number (2) 4-4-001:047.

7. Charley Young Park, located at 2200 South Kihei Road, Kihei, Maui, Hawaii, and identified in State Executive Order No. 3344 as the land set aside for public right-of-way and beach purposes to be under the control and management of the County.

8. Kamaole Beach Park I, located at 2400 South Kihei Road, Kihei, Maui, Hawaii, and identified in State Executive Order No. 822 as the public land set aside for Kamaole Beach Park and to be under the control and management of the County.

9. Kamaole Beach Park II, located at 2550 South Kihei Road, Kihei, Maui, Hawaii, and identified in State Executive Order No. 822 as the public land set aside for Kamaole Beach Park and to be under the control and management of the County.

10. Waiale Park, located on Waiale Road and Waimaluhia Lane, Wailuku, Maui, Hawaii.

Article III. Permits

13.04A.090 Policy. A. Permits required. Certain use or reserved use of a park or recreational facility is subject to the issuance of a permit. Any person, entity, or organization wishing to conduct any activity, event, community class, or program within any park or recreational facility shall obtain a permit from the department prior to conducting the activity, event, lesson, demonstration, class, or program.

B. Priority. Generally if more than one person or organization applies for the exclusive use of the same park or recreational facility, or the same portion thereof, for the same time period, the director will determine priority pursuant to administrative rules adopted under section 13.04A.240 and the following priority:

1. Department sponsored annual special event.
2. Partnership league.
3. Department sponsored special event.
4. Department sponsored general use.
5. Special event.
6. General use.

C. Authorization. The following permits are authorized: camping permit, commercial ocean recreational activity permit, community class permit, general use permit, government permit, and special events permit. A community league shall obtain a general use permit issued by the department.

D. Rescheduling. In the event of inclement weather and unforeseen safety hazards, permits will be accommodated through rescheduling to the extent possible. Permit holders must notify the department within two business days of these circumstances for rescheduling to occur with no additional fees.

13.04A.100 Procedure. A. Application. Any person, entity, or organization seeking a permit pursuant to this chapter shall submit a completed application form available from the department in compliance with department administrative rules. An applicant shall be twenty-one years of age for the consumption of intoxicating liquor to be authorized at a park or recreational facility. The application shall include the following:

1. The name of the person or organization proposing to conduct such activity.
2. If the activity is proposed to be conducted for, on behalf of, or by an organization, the name, address, email

address, and telephone number of headquarters of the organization, and of the authorized agent of such organization.

3. The name, address, email address, and telephone number of the person who will organize such activity and who will be responsible for its conduct.

4. The name, address, email address, and telephone number of the person or organization to whom the permit is to be issued.

5. The nature of the activity to be engaged in by the person or organization.

6. The date when such activity is to be conducted.

7. The hours when such activity will start and terminate.

8. The park or recreational facility or portion thereof for which the permit is requested.

9. An estimate of the anticipated attendance.

10. A statement of equipment and facilities to be used in connection with the activity.

11. Certification of payment in full of all required fees and deposits by the date due as set forth in section 13.04A.100(C).

12. Any other information which the director may require in making the determination as to whether the permit should be granted.

B. Application review. Upon submission, the permit application shall be reviewed and any adjustments or additional information shall be obtained from the applicant's contact listed on the application.

C. Fees and deposits. Schedules for fees and deposits for permits are set forth in the annual budget ordinance of the County. All required fees or deposits shall be paid by the applicant prior to any permit being issued.

1. Payment required. Fees and deposits must be paid within the time frame identified in Table 1. Failure to pay fees and deposits will result in the removal of the application request from the reservation system.

Government	N/A
Community Class	Within 15 days from notice of approved application

General Use	At time of permit issuance
Special Events	
Department Sponsored	Within 15 days from notice of approved application
Department Sponsored w/ Revenue	
Non-profit or Political Fundraiser	
Commercial	

2. Deposits, forfeitures, and refunds. Custodial deposits shall serve as security for cleaning and restoring the permitted property. Key deposits serve as security to ensure all keys are accounted for when provided in conjunction with the permit. Deposits will be refunded provided the permit holder fully complies with deposit requirements.

a. Custodial deposits shall be forfeited to the department if cleaning and restoration is not completed within the time provided by the permit. If the permit holder does not satisfactorily clean and restore the recreational facility or park, the department shall perform the necessary cleaning and restoration, withhold the custodial deposit, and recover by any legal means available, any cost in excess of the deposit.

b. Key deposits shall be forfeited to the department in the event that any key is not returned to the department within two business days, after termination of the activity. If it is necessary for a recreational facility to be re-keyed and that cost exceeds the key deposit, any excess amount shall be recovered from the permit holder by any legal means necessary including forfeiture of the permit holder's custodial deposit.

D. Duration. Other than leagues, permits shall not exceed five consecutive days, unless authorized by the council.

E. Display of permit. The permit holder shall, upon request, show the permit to any law enforcement officer, park caretaker, or any department personnel.

F. Denial. The director may deny the issuance of a permit upon determination that:

1. The requested park or recreational facility is not suitable for the proposed use.

2. The proposed use for the requested park or recreational facility is not in the best interest of the general public.

3. A scheduling conflict exists.

4. In previously using any park or recreational facility, the applicant has:

a. Received a parks citation within the previous year which citation was related to or associated with the use of any park or recreational facility.

b. Used a park or recreational facility in a manner inconsistent with any of the information provided in the application or permit.

c. Conducted an event requiring a permit without properly obtaining a permit.

d. Violated any applicable federal, state or county laws or regulations, such as the prohibitions listed in sections 13.04A.070 or 13.04A.080.

e. Failed to satisfactorily clean or restore any park or recreational facility.

f. Failed to pay any cost in excess of the custodial deposit or key deposit if the department had to clean and restore the premises or re-key the premises due to the permittee's failure.

G. Revocation. The director shall have the authority to revoke an issued permit upon determining that the permit holder, in using the park or recreational facility, will:

1. Allow or create an illegal, dangerous, or intolerable situation to occur.

2. Deviate from the use as provided in the application or permit.

3. Engage in illegal or disorderly behavior.

4. Violate any applicable federal, State or County laws or regulations, such as the prohibitions listed in sections 13.04A.070 or 13.04A.080.

H. Cancellation. Once permit fees and deposits have been paid, notice of cancellation must be received by the department in writing as listed in Table 2. Late notice of cancellation shall incur a cancellation fee equivalent to the custodial deposit. Failure to use the facility as permitted shall result in forfeiture of the custodial deposit and rental fee.

Table 2 Notice of Cancellation Required Before the Scheduled Event Per Permit Type (If the cancellation date falls on a weekend or holiday notification must be received on the business day prior to the weekend or holiday.)	
Government	N/A
Community Class	7 days
General Use	7 days
Special Events	
Department Sponsored	7 days
Department Sponsored w/ Revenue	7 days
Non-profit or Political Fundraiser	21 days
Commercial	30 days

I. Nontransferable. Unless specifically authorized by the director in writing, all permits shall be used by the permit holder and shall not be transferable.

13.04A.110 Permittee liability. All permittees shall execute an indemnity agreement with the County. The director shall determine whether the risk inherent to a particular activity requires the permittee to secure insurance, and the type and amount of insurance, pursuant to administrative rules adopted under section 13.04A.240. Indemnity agreements shall provide that the permittee shall defend, indemnify, and hold harmless the County, its officers, agents, and employees against any and all damages, claims, actions, demands, and proceedings for property damage, personal injury, or wrongful death arising from the negligent, wrongful, or unlawful conduct by the permittee in the use of the County park or recreational facility for which the permit has been issued.

13.04A.120 Appeals. A. Any person aggrieved by a decision or order of the director may file an appeal with the board of variances and appeals pursuant to chapter 19.520, and the rules of practice and procedure as adopted by the board of variances and appeals.

B. Procedure. Pursuant to the board of variances and appeals' rules, a contested case hearing shall be held on the appeal.

The department, through the director, shall be a party to the proceedings.

C. Standard of appeal. The board of variances and appeals may affirm, reverse, or modify, in whole or in part, any decision or order of the director under appeal, provided the board of variances and appeals finds the decision or order is:

1. Based on a clearly erroneous finding of material fact or erroneous application of the law; or
2. Arbitrary or capricious in its application; or
3. A clearly unwarranted abuse of discretion; and
4. A reversal or modification of the decision or order will not jeopardize life, limb, or property.

13.04A.130 Department equipment rental. A. Subject to the issuance of a permit, the director may rent:

1. Large department equipment to the permittee or any County co-sponsored function, activity, program or event, subject to payment of custodial deposits and fees as set forth in the annual budget ordinance; or

2. Small department equipment to any entity described by subsection A(1) and any nonprofit organization which serves the community, subject to payment of custodial deposits and fees as set forth in the annual budget ordinance.

B. Permitted use of department rental equipment also must satisfy the requirements of section 13.04A.110.

C. Priority of use for equipment shall be given to permits issued pursuant to article III, then to County co-sponsored functions, activities, programs or events that are not on parks property, and then to nonprofit organization events which serve the community that are not on parks property.

D. Any damage to rented equipment shall be paid for by the permittee in an amount equal to replacement cost as determined by the director, and the permittee shall forfeit any deposit. Any excess amount shall be recovered from the permit holder by any legal means available.

13.04A.140 Refreshment concessions. Refreshment concessions in parks or recreational facilities shall be administered by the director of finance as follows:

A. The director of finance shall designate buildings within parks and recreational areas that are suitable for permanent refreshment concession facilities.

B. Permanent refreshment concession facilities shall be administered in accordance with chapter 3.40.

C. Temporary refreshment concessions may be authorized in accordance with section 3.40.190(A)(7), by the director of finance

in conjunction with a permit issued pursuant to this chapter for the use of parks and recreational facilities which are not designated as permanent refreshment concessions.

Article IV. Camping

13.04A.200 Camping areas. A. Camping shall be permitted in the following parks, subject to the provisions of this chapter:

1. One Alii Beach Park - Molokai.
2. Papohaku Beach Park - Molokai.
3. Kanaha Beach Park - Kahului, Maui.
4. Papalaua Wayside Park - Lahaina, Maui.

B. Except as otherwise provided, camping shall be restricted to specific camping areas designated and posted for such purpose by the director in the parks listed in subsection A. The director may permit nonprofit organizations or groups to camp in the parks listed in subsection A., or in any other park, for special events. The director may curtail or prohibit camping at any park or withdraw any permit issued if the director determines that the camping is, or would be, detrimental to the public's health, safety, or welfare, or in violation of law.

13.04A.210 Camping permits. A. Applicants for camping permits shall be eighteen years of age or older.

B. Any person desiring to camp at a park must submit a written camping permit application available from the department, and may not camp until a permit is issued.

C. Permits shall be limited to a maximum of four consecutive days for each camping site.

D. Any person shall have in its possession a copy of the permit while camping in a park.

13.04A.220 Camping fees. Any person applying for a camping permit shall at the time of application pay a fee as set forth in the annual budget ordinance to the director of finance.

13.04A.230 Curfew. Only persons camping pursuant to duly issued camping permits shall enter or remain in camping areas within County parks between 8:00 p.m. and 6:00 a.m.

Article V. Rules and Regulations of the Department

13.04A.240 Promulgation. The director may promulgate such rules and regulations pursuant to the Hawaii Administrative Procedures Act to implement any of the provisions of this chapter.

Article VI. Citations, Trespass, Penalties

13.04A.250 Citations. A. Police officers, park security officers, law enforcement officers, and other authorized department enforcement personnel may issue citations for violations of this chapter and violations of rules adopted under section 13.04A.240, provided that parks security officers and other authorized department personnel may issue citations for violations of this chapter, sections 8.20.030(A) and 8.20.030(G), chapter 8.21, and sections 10.48.030(A)(13), 10.48.105, 10.48.110, 10.48.120, 10.48.240, 10.48.250, 10.52.070, 10.76.065, 10.76.070, 10.76.075, and 10.90.010 when the violations occur on property under the control and management of the department.

B. The content and form of summons or citation shall be as adopted or prescribed by the administrative judge of the district courts of the second circuit, and shall be so designed to include all necessary information to make the same valid within the laws of the State. In every case when a citation is issued, the original of the citation shall be given to the violator; provided, in the case of an unattended vehicle, the persons authorized to issue citations under subsection A., upon finding an offending vehicle, shall record the vehicle's registration number and any other information displayed on the vehicle that may identify its registered owner and shall conspicuously affix to the vehicle the original of the citation; the citation shall be addressed to the registered owner of the vehicle, but need not identify the registered owner by name, so long as the citation identifies the vehicle by its license plate number or vehicle identification number.

C. Every citation shall be consecutively numbered and each copy shall bear the number of its respective original.

13.04A.260 Trespass. Police officers, park security officers, law enforcement officers, and other authorized department enforcement personnel responding to a complaint of violation of the prohibitions under sections 13.04A.070 or 13.04A.080, or any offense under the Hawaii Revised Statutes, or personally observing the same, within the limits of any park or recreational facility, may take the following course of action:

A. The officer may issue a reasonable warning or request to leave the park or recreational facility. For the purposes of this section, "reasonable warning or request" means a warning or request communicated in writing to a person which may contain but is not limited to the following information:

1. A warning statement advising the person that the person's presence is no longer desired in the park or recreational facility for a period of no less than 24-hours from

the date and time of the notice, that violation of the warning will subject the person to arrest and prosecution for trespass pursuant to section 13.04A.260, and that such trespass constitutes a petty misdemeanor as defined in section 701-107, Hawaii Revised Statutes. The expiration of the warning does not authorize entry of a park or recreational facility which is closed.

2. The legal name, any aliases, and a photograph, if practicable, or a physical description, such as gender, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned.

3. The name of the person giving the warning along with the date and time the warning was given.

4. The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given, and, if possible, the signature of the person to whom the warning was issued. Warnings shall be available in the following alternative formats upon request: large format, braille, audiotape, and simplified language. A copy of the warning citation shall be retained by the issuing authority and attached to a written report which shall be submitted in all cases to the parks district supervisor for the park or recreational facility involved.

B. If the person so ordered refuses to comply with the written warning or request to leave the park or recreational facility, or returns to the park or recreational facility before the expiration of the 24-hour period, the department of police shall be notified and the person shall be subject to arrest and prosecution for trespass under this section.

C. Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting the arrest.

D. This section shall not operate as a bar against prosecution under any other section of the Hawaii Revised Statutes.

13.04A.270 Penalties. A. Anyone who violates any provision of this chapter, except sections 13.04A.070(E), 13.04A.260, or 13.04A.360 shall, upon conviction, be subject to a fine of not less than \$150 and not more than \$500.

B. Anyone who violates section 13.04A.070(E) shall, upon conviction, be subject to a fine of not less than \$50 and not more than \$500.

C. Anyone who violates section 13.04A.260 shall, upon conviction, be guilty of a petty misdemeanor as defined in section

701-107, Hawaii Revised Statutes, and is subject to a fine of up to \$1,000 and imprisonment for term not to exceed thirty days.

Article VII. Commercial Ocean Recreational Activity

13.04A.280 Purpose; single activity. The purpose of this article is to regulate commercial ocean recreational activity to ensure County beach parks are utilized for the community's maximum recreational, environmental, and economic benefit. Engaging in, and providing instruction or guidance to any patron regarding the use of equipment in the same pursuit shall constitute no more than one ocean recreational activity.

13.04A.290 Prohibitions. Commercial ocean recreational activity is prohibited at Baldwin Beach Park, Cove Park, Hookipa Beach Park, Kamaole Beach Park I, Kamaole Beach Park II, Kamaole Beach Park III, the southern portion of Kalama Park (the section of Kalama Park from the sand beach at Cove Park to the southern most parking area adjacent to South Kihei Road), Launiupoko Beach Park, and Puamana Beach Park.

13.04A.300 Permit requirement. A. It is unlawful for any business to conduct a commercial ocean recreational activity without a permit.

B. A business not having a permit pursuant to section 13.04A.330 shall obtain a commercial special events permit issued pursuant to article III before the business may conduct commercial ocean recreational activity.

C. A separate permit shall be required for each commercial ocean recreational activity.

D. Additional regulation of commercial ocean recreational activity may be established by administrative rules such as the days, time, place, and volume of use of County beach parks.

13.04A.310 Permit application – issuance – denial – appeal. A. Permit applications shall be available and may be submitted at district park offices. An applicant may seek multiple permits in a single application.

B. A permit application shall be in writing, properly verified under oath, and shall not be deemed complete until such application sets forth and includes the following:

1. The applicant's name, business location address, e-mail address, mailing address, and telephone numbers.
2. The specific ocean recreational activity for which the permit is being sought.
3. The name of the County beach park.

4. A list stating the license number, type, description, and gross vehicle weight of all motor vehicles to be used by the applicant.

5. Any other information required by administrative rules.

6. An application fee and a permit fee as set forth in the annual budget ordinance.

7. The number of certified copies needed for the business to comply with section 13.04A.350.

8. State and federal tax clearance certificates.

9. A list of the equipment to be used by the applicant.

C. Within five business days from receipt of a complete application, the director shall submit a copy of the complete application to the department of police. The department of police shall within twenty business days from the receipt thereof submit to the director a written report with any recommendations or special conditions that may be necessary or desirable. If the department of police does not submit a report within twenty business days, it shall be deemed to have submitted a report with no comments on the application. Upon request from the department of police, the director may grant the department additional time to review the application, in accordance with administrative rules.

D. An applicant shall notify the director within five business days of a change to any information required to be included in the application after the application is submitted for approval or after the permit has been issued. Failure to comply may result in suspension or revocation of the permit.

E. The director may issue the permit, upon payment of any required fee, with or without special conditions or requirements in accordance with administrative rules. The director shall issue or deny the permit within thirty business days of the director's receipt of the department of police's report. If the director denies the permit, the director shall notify the applicant in writing of the decision, setting forth the reasons for the denial. If the director does not issue or deny the permit within thirty business days of the director's receipt of the department of police's report, the permit shall be deemed denied.

F. Any decision by the director under this article may be appealed by the applicant in accordance with section 13.04A.120.

13.04A.320 Permit conditions. All permits shall be subject to the following conditions:

A. The permit holder shall provide proof of current American Red Cross certification in cardiopulmonary resuscitation (CPR) and first aid, or equivalent certification.

B. All transactions necessary to entitle a patron to engage in ocean recreational activity (such as selection of activities to be engaged in, selection of equipment, execution of rental agreements, payment for services, distribution or posting of commercial notices, advertising, signage or tents) shall be accomplished at the permit holder's business location. No such transactions shall be permitted or performed in or on County property.

C. In the event administrative rules designate an exclusive area in or on County property for unloading, rigging, assembly, and disassembly of the permit holder's equipment, such activities shall be completed in that area and for no more than thirty minutes at a time.

D. Only equipment authorized by the permit shall be unloaded from a vehicle. All other equipment shall remain enclosed in or placed on top of the vehicle used to transport the equipment. No equipment may be displayed, stored, maintained, or repaired in or on County property.

E. The permit holder shall:

1. Name the County as an additional insured on the permit holder's general liability insurance policy of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which insurance shall include a duty to defend the County if the County is sued as the result of the permit holder's commercial ocean recreational activity. The insurance policy shall be issued by a provider that is acceptable to the County, as evaluated by standards established by administrative rules.

2. Provide the County with a copy of the insurance policy in which the County is named as an additional insured.

3. Execute an indemnification agreement with the County covering any losses sustained as the result of the permit holder's commercial ocean recreational activity, over and above those losses covered by the permit holder's general liability insurance coverage.

F. The permit holder shall submit an acceptable safety policy, as evaluated by standards established by administrative rules.

13.04A.330 Permit term – suspension – revocation.

A. Permits issued pursuant to this article shall have a duration of up to one year pursuant to standards in administrative rules, and shall expire automatically, without notice to the permit holder, on the date specified on the permit.

B. The director may suspend or revoke any permit issued pursuant to this article if the permit holder has violated any rule,

ordinance, or statute related to the commercial ocean recreational activity.

13.04A.340 Nontransferable. Permits shall not be transferable.

13.04A.350 Inspection of permit. The permit holder shall at all times keep the permit in a prominent place, convenient for inspection, at the business location. Each permit holder shall also possess a copy of the appropriate permit while engaged in commercial ocean recreational activity.

13.04A.360 Penalties. Any person operating a commercial ocean recreational activity without a permit shall, upon conviction, be guilty of a petty misdemeanor subject to a fine of not less than \$750 and not more than \$1,000, or imprisonment for not more than thirty days, or both, and any penalty imposed pursuant to Hawaii Revised Statutes.

13.04A.370 Ocean recreational activity fund. There is established and created a fund to be known as the "Ocean Recreational Activity Fund." Any fees collected pursuant to this article shall be deposited in the Ocean Recreational Activity Fund, are deemed appropriated upon receipt, and may be expended for purposes relating to the implementation of this article, such as the provision of salaries, the purchase of equipment, and the maintenance of County property.

SECTION 2. Section 3.04.010, Maui County Code, is amended to read as follows:

"3.40.010 Establishment of policy. Pursuant to [the provisions of subsection] section 8-4.3.10 [of the charter], Revised Charter of the County of Maui (1983), as amended, the following is declared to be the policy of the [county] County governing the leasing, renting and letting of real property and the awarding of concessions of the county, except as otherwise provided [for under Maui County Code, Section 13.04.150] in section 13.04A.140."

SECTION 3. Section 6.04.090, Maui County Code, is amended to read as follows:

"6.04.090 Animal control officers. Pursuant to section 143-7 of the Hawaii Revised Statutes, the council authorizes the

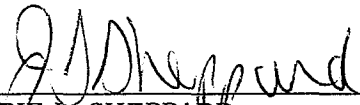
mayor of the County or the mayor's authorized representative to establish, designate as volunteers, and hire animal control officers, subject to the limitations contained in the annual budget ordinance. All animal control officers shall have the powers of a sheriff or police officer [in carrying out] to enforce this chapter, and chapter 6.08, [section 13.04.040(D)] of this code[,]; and chapter 143 of the Hawaii Revised Statutes.”

SECTION 4. Chapter 13.04, Maui County Code, is repealed.

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material or the underscoring.

SECTION 6. This ordinance shall take effect July 1, 2016.

APPROVED AS TO FORM AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
LF 2014-3156