

COUNCIL OF THE COUNTY OF MAUI

PARKS AND AGRICULTURE COMMITTEE

September 19, 2003

Committee

Report No.

03-104

As Amended

NOTE: The recommendation contained in this committee report was amended by the Council at its meeting of September 19, 2003, by deleting the bracketed material and underscoring the new material. This committee report was then adopted as amended.

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

Chair and Members:

Your Parks and Agriculture Committee, having met on June 19, 2003, July 31, 2003, August 4, 2003, August 5, 2003, August 14, 2003, and August 18, 2003, makes reference to a Miscellaneous Communication dated May 21, 2001, from the County Clerk, referring the matter relating to fees for ocean recreational activity permits.

Your Committee notes that the Miscellaneous Communication was referred to the prior Council's Parks and Recreation Committee at the Council meeting of May 14, 2001.

Your Committee further notes that the prior Council's Parks and Recreation Committee reported on this matter by Committee Report Nos. 02-51 and 02-104.

At its meeting of December 4, 2002, the Parks and Recreation Committee recommended that the Miscellaneous Communication be referred to the Council Chair for the term beginning January 2, 2003, for a recommendation as to referral or other disposition (Committee Report No. 02-202).

By correspondence dated December 10, 2002, the Department of the Corporation Counsel transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 3, MAUI COUNTY CODE, TO ESTABLISH A BEACH PARK REVOLVING FUND", as requested by the Committee. The purpose of the proposed bill is to establish a beach park revolving fund.

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At its meeting of January 10, 2003, the Council referred the Miscellaneous Communication to your Parks and Agriculture Committee (County Communication No. 03-11).

By correspondence dated February 19, 2003, the Chair of your Committee transmitted correspondence dated February 15, 2003, from M. Carabello of Club Maui Beach Service, regarding public safety access into the ocean at Kalama Park and ocean recreational activity permits.

By correspondence dated March 6, 2003, the Chair of your Committee requested that the Department of the Corporation Counsel prepare a proposed bill to transfer the responsibility for issuing and enforcing ocean recreational activity permits from the Department of Finance to the Department of Parks and Recreation.

By correspondence dated April 16, 2003, the Chair of your Committee transmitted correspondence dated April 11, 2003, from Gregory L. Howeth, on behalf of the Maui Committee on Ocean Recreation Permits Ocean Tourism Coalition (OTC), submitting proposed revisions to Chapter 5.24, Maui County Code, relating to ocean recreational activity permits.

By correspondence dated June 4, 2003, the Chair of your Committee transmitted correspondence dated May 19, 2003, from M. Carabello, including information relating to a potential County liability arising from the operation of surf schools at Kalama Park and a proposed revenue-generating plan to allocate funds needed for the Department of Parks and Recreation.

By correspondence dated June 9, 2003, the Department of the Corporation Counsel transmitted a draft bill entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO RECREATIONAL AREA REGULATIONS". The purpose of the draft bill is to repeal Chapter 5.24, Maui County Code, and amend Chapter 13.04, Maui County Code, by: (1) adding a new article relating to the conduct of ocean recreational activity businesses, and (2) transferring the administration of ocean recreational activity permits from the Department of Finance to the Department of Parks and Recreation.

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By correspondence dated June 19, 2003, the Chair of your Committee transmitted a chart entitled "Comparison of Chapter 5.24 regarding Ocean Recreational Activity Business Permits, Recommendations from the Ocean Tourism Coalition, and the Draft Bill relating to Chapter 13.04 Recreational Area Regulations".

At its meeting of June 19, 2003, your Committee met with the Director of Parks and Recreation, the Deputy Director of Parks and Recreation, the Director of Finance, and a Deputy Corporation Counsel.

Your Committee received testimony from 17 members of the public. Fourteen individuals from the ocean recreational activity industry provided various comments regarding the draft bill. An elementary-school student expressed concerns about the continued availability of windsurfing lessons. Another member of the public spoke in support of relaxing regulations for opportunities for small businesses. A South Maui community police officer provided insight into some of the current regulatory concerns.

Your Committee received the following items at the meeting:

1. Written testimony dated June 19, 2003, from Rene Umberger, President of Octopus Garden Divers, Inc., regarding home-based businesses.
2. A list of nine issues pertaining to the draft bill from the Ocean Tourism Coalition.
3. The County's Ocean Recreational Activity Business Permit List (from the Department of Finance).
4. Written testimony dated June 13, 2003, from Toni Marie Davis, Executive Director of the Activities and Attractions Association of Hawaii, regarding the draft bill.
5. A copy of correspondence dated June 13, 2003, from Dustin Tester, Camp Founder of Maui Surfer Girls, to the Mayor, regarding her attempts to renew her ocean recreational activity permit.

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The Director of Finance informed your Committee about concerns relating to the enforcement of Chapter 5.24 at South Maui beaches and expressed his support for the draft bill.

The Deputy Director of Parks and Recreation stated that there is a need for a balance in developing regulations for commercial ocean recreational activities and the use of County facilities for both residents and visitors. He informed your Committee that the Department is asking for permits, by park, to provide a mechanism to track permits for each location.

Your Committee requested that staff work with Administration representatives and the OTC to evaluate the suggestions provided by the testifiers.

Your Committee deferred the matter pending further discussion.

By correspondence dated July 1, 2003, the Chair of your Committee transmitted correspondence dated June 5, 2003 from Martin Kirk, expressing concerns regarding the Federal Aviation Administration waivers for kiteboarding at Kanaha Beach Park.

By correspondence dated July 1, 2003, the Chair of your Committee transmitted correspondence dated June 19, 2003 from Manny Carabello, Owner/Operator of Club Maui Beach Service, regarding the termination of his Kalama Park ocean recreation activity permit.

By correspondence dated July 28, 2003, the Chair of your Committee transmitted correspondence dated July 25, 2003 from Penny Wakida, supporting a strict permit process and enforcement of County parks and beach accesses.

Your Committee notes that it received correspondence from 62 members of the public from July 29, 2003 through August 18, 2003, providing comments on the draft bill regarding safety concerns, enforcement issues, limitations on commercial use of County beach parks, and related matters.

At its meeting of July 31, 2003, your Committee met with the Director of Parks and Recreation; the Deputy Director of Parks and Recreation; the South

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Maui District Parks Supervisor, the West Maui Maintenance Supervisor, a West Maui District Parks staff member, and the Chief of Recreation and Support Services from the Department of Parks and Recreation; the Director of Finance; an Assistant Chief of Police, a Captain and a Community Police Officer from the Department of Police; and a Deputy Corporation Counsel.

Your Committee received testimony from 16 members of the public. Twelve people from the ocean recreational activity industry provided various comments regarding the draft bill, and four residents expressed support for the draft bill.

Your Committee received the following from the Chair of your Committee:

1. A revised version of the draft bill (labeled "Draft 2C") entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO RECREATIONAL AREA REGULATIONS".
2. A chart entitled "Comparison of Chapter 5.24 regarding Ocean Recreational Activity Business Permits, Draft Bill relating to Chapter 13.04 Recreational Area Regulations, and Draft 2C".

The Director of Finance informed your Committee that his Department supports the draft bill.

The Deputy Director of Parks and Recreation introduced members of the Department of Parks and Recreation staff who provided insight regarding the impact of commercial ocean recreational activities at County beach parks. Topics raised included the use of County resources, such as water, electricity, and wastewater; vandalism; the need for enforcement and self-policing by the ocean recreational activity industry; the use of County facilities by businesses without proper permits; and the overuse of Luniupoko Beach Park and Puamana Beach Park.

The Deputy Director of Parks and Recreation advised that the Administration supports the proposed transfer of responsibility for administering

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ocean recreational activity permits from the Department of Finance to the Department of Parks and Recreation. He noted, however, that the Department of Parks and Recreation would require additional personnel for administration and enforcement, additional time to develop administrative rules that would implement the bill, and a transition plan for the transfer from the Department of Finance to the Department of Parks and Recreation.

The Deputy Corporation Counsel informed your Committee that the following principles were kept in mind when the draft bill was prepared:

1. There is no legal right to use public property for private profit.
2. The County has no jurisdiction over activities in the ocean.
3. The County's primary duty and obligation is to maintain and operate County parks for the general public's use and benefit.

The Deputy Corporation Counsel also noted that the impact on the tourism industry and the prior practice of allowing the vendors to use County parks since the 1980s were also considered.

Your Committee recessed its meeting until August 4, 2003.

At its reconvened meeting of August 4, 2003, your Committee met with the Director of Parks and Recreation, the Deputy Director of Parks and Recreation, the Director of Finance, a Community Police Officer from the Department of Police, and a Deputy Corporation Counsel.

Your Committee received the following:

1. A document with suggested changes to Draft 2C of the bill entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO RECREATIONAL AREA REGULATIONS" (from the Chair of your Committee).

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2. The City and County of Honolulu's Ocean Recreational Permit Fees schedule and the County of Maui Department of Parks and Recreation's Community Class Policy (from the Deputy Director of Parks and Recreation).

Your Committee expressed concerns regarding the level of detail that should be included in the legislation in comparison to the administrative rules. The Deputy Director of Parks and Recreation stated that the Department's recommendation is to include details such as the types of activities, number of permits, and size of classes in the administrative rules.

Your Committee notes that administrative rules could implement and compliment any new ordinance by providing more detailed regulation in furtherance of the ordinance's policy objectives.

Your Committee requested that your Committee staff work with the Department of the Corporation Counsel in drafting text to provide for the possible transfer of responsibility for permit administration from the Department of Finance to the Department of Parks and Recreation.

Your Committee recessed its meeting until August 5, 2003.

At its reconvened meeting of August 5, 2003, your Committee met with the Director of Parks and Recreation, the Deputy Director of Parks and Recreation, the Director of Finance, a Captain from the Department of Police, and a Deputy Corporation Counsel.

Your Committee received a revised version of the draft bill (labeled "Draft 3") entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO RECREATIONAL AREA REGULATIONS" (from the Chair of your Committee).

Your Committee discussed the list of beach parks where commercial ocean recreational activity would be prohibited and considered the possible prohibition of commercial ocean recreational activity on weekends and holidays.

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Your Committee deferred the matter pending further discussion.

By correspondence dated August 8, 2003, the Chair of your Committee transmitted a revised version of the draft bill (labeled "Draft 4") entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO RECREATIONAL AREA REGULATIONS".

By correspondence dated August 14, 2003, the Chair of your Committee transmitted a chart comparing Draft 4 with Chapter 5.24, Maui County Code, and providing an explanation of revisions incorporated into Draft 4.

At its meeting of August 14, 2003, your Committee met with the Deputy Director of Parks and Recreation, the Deputy Director of Finance, the Motor Vehicle Licensing Manager from the Department of Finance, two Captains and a Community Police Officer from the Department of Police, and a Deputy Corporation Counsel.

Your Committee received testimony from 46 members of the public, including 30 people from the ocean recreational activity industry, the Mayor, and 15 residents.

The Mayor stated that he supported the proposed transfer of permit administration from the Department of Finance to the Department of Parks and Recreation.

Representatives of the commercial ocean recreational activity industry provided comments on the draft bill and expressed concerns about the proposed list of beach parks where commercial ocean recreational activity would be prohibited and the proposed prohibition of commercial ocean recreational activity on weekends and holidays.

Other testifiers expressed support for the draft bill, as well as concerns about the weekend and holiday restrictions on commercial ocean recreational activity.

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Your Committee received the following documents:

1. Written testimony dated August 14, 2003, from Dennis Fitzpatrick, providing comments on commercial ocean recreational activity.
2. Written testimony dated August 13, 2003, from Bob Babson, in opposition to the draft bill.
3. Written testimony from Teri Stewart, expressing support for the scuba industry.
4. Written testimony dated August 14, 2003, from Kim Ball, in opposition to the proposed prohibition of commercial ocean recreational activity on weekends and holidays.

Your Committee recessed its meeting until August 18, 2003.

At its reconvened meeting of August 18, 2003, your Committee met with the Deputy Director of Parks and Recreation; the Director of Finance; a Staff Planner from the Department of Planning; a Captain and a Community Police Officer from the Department of Police; a Deputy Corporation Counsel; and John Rapacz, Esq. and Jeff Strahn representing the OTC.

Your Committee received the following documents:

1. Correspondence dated August 18, 2003, from Gary Elster, submitting a copy of a petition, containing 107 signatures, urging that commercial ocean recreational activity be banned at Ukumehame Beach Park.
2. A document providing data on enforcement costs and fines (submitted by the Deputy Director of Parks and Recreation).

After lengthy discussion, your Committee voted to revise the draft bill to establish that the purpose of the Article X, Chapter 13.04, Maui County Code, "is to fairly and effectively regulate commercial ocean recreational activity to ensure that County beach parks and other County property are utilized for the community's maximum recreational, environmental, and economic benefit." Your Committee

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voted to further revise the draft bill to advance this purpose and incorporated the following components:

1. A provision stating that administrative rules implementing Article X shall be consistent with the article's purpose.
2. A definition section applicable only to Article X and not the remainder of Chapter 13.04.
3. A provision indicating that an applicant may seek multiple permits in a single application.
4. A provision indicating that a separate permit, issued to the business, will be required for each instructor participating in a commercial ocean recreational activity.
5. A prohibition on commercial ocean recreational activity at seven beach parks: Baldwin Beach Park, Cove Park, Kamaole Beach Park I, Kamaole Beach Park II, Kamaole Beach Park III, the southern portion of Kalama Park, and Puamana Beach Park.
6. Transitional language to provide a six-month overlap between the issuance of permits under Chapter 5.24, Maui County Code (Department of Finance) and Article X, Chapter 13.04, Maui County Code (Department of Parks and Recreation).

Your Committee voted to recommend passage of the draft bill, as revised, on first reading.

In addition, your Committee voted to recommend that the following matters be referred to your Committee as separate items for consideration:

1. The matter relating to an appeals process for Chapter 5.24, Maui County Code (in part, to address concerns raised by the Department of Finance).
2. The matter relating to penalties in Chapter 13.04, Maui County Code (in part, to consider increasing fines).

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Your Committee also voted to recommend filing of the communication.

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO RECREATIONAL AREA REGULATIONS", approved as to form and legality by the Department of the Corporation Counsel, incorporating the amendments recommended by your Committee.

Your Parks and Agriculture Committee RECOMMENDS the following:

1. That Bill No. _____ (2003), attached hereto, entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 5.24, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO RECREATIONAL AREA REGULATIONS", be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That the matter relating to an appeals process for Chapter 5.24, Maui County Code, be REFERRED to your Parks and Agriculture Committee;
3. That the matter relating to penalties in Chapter 13.04, Maui County Code, be REFERRED to your Parks and Agriculture Committee; [and]
4. That the matter relating to beach parks where ocean recreational activities are prohibited in Section 5.24.040, Maui County Code, be REFERRED to your Park and Agriculture Committee; and
5. That the Miscellaneous Communication be FILED.

Adoption of this report is respectfully requested.

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JO ANNE JOHNSON Chair

JOSEPH PONTANILLA Member

ROBERT CARROLL Vice-Chair

CHARMAINE TAVARES Member

MICHAEL J. MOLINA Member