

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF PARKS AND RECREATION

Under and by virtue of the authority conferred upon him by Chapter 91, Hawaii Revised Statutes (HRS), Chapter 10, Revised Ordinances of Honolulu 1990 (ROH), as amended, and every other enabling power, the Director of the Department of Parks and Recreation of the City and County of Honolulu does hereby prescribe the following:

AMENDED RULES AND REGULATIONS
RELATING TO THE LIMITED COMMERCIAL USE
OF PARKS AND PARK FACILITIES

PART I

Section 1. Findings and Purpose. Pursuant to Section 10-1.3(10)(b), ROH 1990, as amended, the people of the City and County of Honolulu have determined that certain commercial activities, which are generally recreational in nature, may be allowed in limited numbers and under controlled conditions within selected park areas under the management and control of the Department of Parks and Recreation.

It has been further established that these commercial activities will favorably contribute toward the ability of the general public to enjoy and utilize certain park areas and facilities. These activities, however, will result in increased administrative costs to the Department. Therefore, the system which allows these commercial uses should ensure that the public is properly recompensed for the additional costs incurred.

It is also recognized that because of the risk inherent with certain activities, it is in the public's interest, safety and welfare that the permittees shall meet the requirement as indicated in the definitions of scuba instructor, snorkel instructor and snorkel tour guides as listed in Part I, Section 3. Definitions, of these rules.

Finally, it is recognized that commercial activities within City parks exist as a privilege, not as a right. Therefore, all reasonable measures by the Department of Parks and Recreation to minimize the adverse impacts of these activities upon the general public and upon park capacities, are just and proper. These measures may include, but are

not limited to, temporarily or permanently curtailing at any location, one or more commercial activities that may have become incompatible due to changes in circumstances.

Section 2. Applicability and Scope. These rules shall apply to all areas of the park system under the jurisdiction of the City and County of Honolulu as defined in Section 10-1.1, ROH 1990, as amended. The purpose of these rules is to govern the use and protection of the City and County park system. (Authority: §10-1 and §10-1.3(b), ROH 1990, as amended.)

Section 3. Definitions. As used in these rules, unless the context requires otherwise:

"Accessory activity" means a use which is incidental and subordinate to an authorized activity.

"Applicant" means an individual, group or organization who has made a formal request or petition to the Department for a determination upon a commercial activity or for the purpose of securing a permit.

"Authorized activity" means a commercial use which has been properly reviewed and approved under these rules.

"Authorized representative" means any person legally or otherwise properly designated to act for the Director.

"Commercial activity" means a use or purpose designed for profit, which includes the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic or commerce in general; provided, however, that the use of land for utility purposes shall not be considered a commercial activity.

"Department" means the Department of Parks and Recreation, City and County of Honolulu.

"Director" means the Director of the Department of Parks and Recreation, City and County of Honolulu.

"Permittee" means an individual, group or organization who has requested and received permission to conduct an authorized activity according to these rules.

"Scuba Instructor" means an individual who is currently certified to conduct scuba diving instruction by a nationally recognized certification agency and is rated scuba instructor or of higher category.

"Snorkel Instructor" means an individual who is currently certified by the American Red Cross or American Heart Association in Cardio-Pulmonary Resuscitation techniques, American Red Cross Lifeguard Training and Standard First Aid or by other nationally

recognized certification agency or who is currently certified to conduct snorkel instructions by a nationally recognized certification agency.

"Snorkel Tour Guide" means an individual who conducts snorkel tours and shall have met the requirements established for a snorkel instructor.

"Snuba Guide" means an individual who has been certified by the American Red Cross in Cardio-Pulmonary Resuscitation techniques or by another nationally recognized certification agency and who is currently authorized to conduct snuba activities by Snuba International, Inc., as a snuba guide.

"Windsurfing Instructor" means an individual who has been certified by the American Red Cross or American Heart Association in Cardio-Pulmonary Resuscitation techniques, American Red Cross Lifeguard Training and Standard First Aid and who has been certified to conduct windsurfing instruction by a nationally recognized certification agency.

Section 4. Penalties. Any person found in violation of these rules may be subjected to a fine of up to five-hundred dollars or by imprisonment for up to thirty days, or by both such fine and imprisonment, for each violation. (Authority: §10-1.6(d), ROH 1990, as amended.)

PART II

Section 5. Commercial Activities. All commercial activities within City parks are subject to a system of regulation. Only authorized commercial activities shall be allowed within City parks. (Authority: §10-1.2(b), ROH 1990, as amended.)

Section 6. Exception. Unless otherwise indicated, commercial activities which are authorized or controlled by concession, contract or are part of a City-sponsored program, other than that described herein, shall not be subject to these rules. (Authority: §10-1.3(b), ROH 1990, as amended.)

Section 7. Authorized Activity Designation. A commercial activity may receive an authorized activity designation only after proper designation application has been made to the Department and a public hearing has been held upon the designation application. (Authority: §10-1.3(b), ROH 1990, as amended.)

Section 8. Public Hearing. During the course of a public hearing upon an application for an authorized activity designation, the Director or an authorized representative may accept and consider written and oral information from interested persons concerning but not limited to:

(1) Whether the activity is consistent with the nature of a particular park or park system;

- (2) Whether the facilities in a particular park or the facilities of the park system generally may be consistent with the needs of the applicant and the general public;
- (3) The extent to which the general public will be inconvenienced should the activity be authorized;
- (4) An appropriate fee to be assessed should the activity be authorized;
- (5) Proper parks or locations within parks where the activity should take place;
- (6) Appropriate times or durations when the activity should occur;
- (7) The proper number of persons that should be allowed to participate in the activity; or
- (8) Any other subject or condition which relates to the propriety of any designation application. (Authority: §10-1.3(b), ROH 1990, as amended.)

Section 9. Accessory Activity. Any accessory activity shall be a permitted use provided it retains its subordinate character; and it remains incidental to the proper functioning of its authorized activity. (Authority: §10-1.3(c), ROH 1990, as amended.)

Section 10. Disposition of Designation Application. After a public hearing described in Section 8 of these rules, but in no event later than twenty days thereafter, the Director shall determine the disposition application either by:

- (1) Granting the authorized activity designation as described within the application and recommending to the City Council a permit fee;
- (2) Granting the authorized activity designation but imposing reasonable conditions thereto and recommending to the City Council a permit fee;
- (3) Requiring one or more further public hearings, or
- (4) Denying the authorized activity designation and providing the applicant with a written explanation for the denial. (Authority: §10-1.3(b), ROH 1990, as amended.)

Section 11. Revocation of Authorized Activity Designation. The Director or an authorized representative may schedule a public hearing for the purpose of revoking or otherwise modifying an authorized activity designation. During the course of such a hearing, information may be accepted from interested parties related but not limited to:

- (1) Changes in conditions subsequent to the granting of the authorized activity designation;

(2) The reasonableness of the conditions that may have been set forth in the granting of the designation; and

(3) Any other factor which relates to the proposed revocation or modification of the authorized activity designation.

After such a hearing, the Director may revoke, modify or continue the authorized activity designation, providing applicant and the affected permittees with a written explanation for the action. (Authority: §10-1.3(b) and (c), ROH 1990, as amended.)

PART III

Section 12. Permits. All authorized activities shall be conducted within the park system only with a valid permit. A valid permit shall be the green-colored permit issued by the Department. Duplicate copies shall not be honored. (Authority: §10-1.3(a), ROH 1990, as amended.)

Section 13. Fees. All permits shall be subject to a fee established under Section 10 of these rules. (Authority: §10-1.3, ROH 1990, as amended.)

Section 14. Application for Permit. The following conditions shall apply to permits:

(1) In general, permits shall be issued on a first-come, first-served basis; however, depending upon the commercial activity and the beach park involved, the Department may implement a lottery system when the number of requests exceeds the number of permits allowed.

(2) Persons eighteen years of age or older who have met the requirements established by these rules shall be eligible to secure permits.

(3) Permits shall be obtained from the Department at the following address:

Honolulu Municipal Building
650 South King Street
Honolulu, Hawaii 96813

(4) Permits shall be obtained between the hours of 7:45 a.m. and 4:00 p.m. on regular working days of the Department.

(5) Permits shall be non-transferable.

(6) Persons or organizations to whom permits are issued are bound by the permit conditions stipulated on or attached to the permit and any applicable Federal, State and County laws, ordinances and rules and regulations.

(7) The size of the groups as well as the length of time any permit may be in effect may be limited by the Director or an authorized representative in accordance with the authorized activity designation described in Section 10 of these rules.

(8) Fees and charges, as set by the City Council, shall reflect the reasonable cost of administration of the activity by the City and County of Honolulu, or to meet other conditions as the Director or an authorized representative may prescribe to carry out the provisions of Section 10-3.1, Section 10-3.2 and Section 10-5.4, ROH 1990, as amended.

(9) All payments of fees and charges shall be in cash, personal check, cashier's check, certified check, postal money order, or bank money order.

(10) Upon request, permittees shall show the permit qualification card and identification card to an authorized representative, including water safety officers, and to any law enforcement officer upon arrival at the designated park.

(11) There shall be reasonable limitations upon the number of permits issued to each applicant for every park location, in accordance with authorized activity designation described in Section 10 of these rules.

(12) Other terms and conditions deemed by the Director necessary to carry out the provisions of Section 10-1.3(10)(b), ROH 1990, as amended, these rules, or any applicable Federal, State or County statute, ordinance or rule.

Section 15. Denial of Permit. Application for permits may be denied when:

(1) The park or park facilities requested are closed or will be closed because of damages, or because of scheduled or ongoing construction, repairs or maintenance activities, or because of other reasons.

(2) A state of emergency is declared by the Director or other proper authorities.

(3) Natural or civil disturbances, including but not limited to, tsunamis, floods, earthquakes, storms, riots, demonstrations, and employee strikes occur or threaten to occur.

(4) There are inadequate facilities to meet the needs of the applicant for the permit and the needs of the general public.

(5) The requested time or duration for the permit would exceed the limits as may be established for this activity under Section 10 of these rules.

(6) The requested number of people for the permit would exceed the limits as may be established for this activity under Section 10 of these rules.

(7) The request would exceed the number of permits authorized for that time and location, as may be established under Section 10 of these rules.

(8) An applicant has previously failed to perform in accordance with the conditions of these rules and regulations and who has been issued citations for such violations or whose permit has been revoked for violations of these rules.

Section 16. Revocation of Permit. Permits may be revoked, canceled or otherwise terminated at any time without prior notice when:

- (1) A state of emergency is declared by the Director or other proper authorities.
- (2) Natural or civil disturbances, including but not limited to, tsunamis, floods, earthquakes, storms, riots, demonstrations and employee strikes occur or threaten to occur.
- (3) Permittees violate permit conditions or other provisions of these rules.
- (4) Fees, as required, are not paid. (Authority: §10-1.3(c), ROH 1990, as amended.)
- (5) The authorized activity designation is revoked.

Section 16A. Appeal of Revocation. Any permittee whose permit has been revoked by the Director may appeal to the City Council pursuant to the rules and regulations, and said appeal must be filed by the permittee within 30 days of the mailing of a notice of said revocation to the last known address of the permittee.

Section 17. Non-use of Permit. Failure to use a permit at the designated time and place, not due to an act of interference by the Department, shall not result in a refund or credit of fees previously paid. (Authority: §10-1.3(c), ROH 1990, as amended.)

Section 18. Advertisements. Commercial notices or advertisements shall not be displayed, posted or distributed within the parks except with the prior written permission of the Director. Permission may be granted only if the notice or advertisements relate to services, goods or facilities available within the premises and the notices and advertisements are found by the Director to be desirable and necessary for the convenience and guidance of the public. (Authority: §10-1.2(9)(6), ROH 1990, as amended.)

Section 19. Business Operations. Engaging in or soliciting any business within the premises except in accordance with the provisions of a permit, contract, license, lease, concession or other written agreement with the City and County of Honolulu is prohibited. (Authority: §10-1.2(b)(2), ROH 1990, as amended.)

Section 20. Incorporation of Authorized Activities. The activities designated as authorized under Section 10 of these rules shall be incorporated and made a part of these same rules. (Authority: §10-1.3(b), ROH 1990, as amended.)

Section 21. Severability. If any section, subsection, sentence, clause, phrase or portion of these rules is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 22. Effective Date. These rules shall take effect ten days after filing with the Office of the City Clerk.

ADOPTED this 2nd day of October, 1992, by the Director of the Department of Parks and Recreation, City and County of Honolulu, State of Hawaii.

WALTER M. OZAWA, Director
Department of Parks and Recreation
City and County of Honolulu

APPROVED AS TO FORM:

Deputy Corporation Counsel

APPROVED this 12th day of

October __, 1992.

FRANK F. FASI, Mayor
City and County of Honolulu

CERTIFICATION

I, WALTER M. OZAWA, in my capacity as Director of the Department of Parks and Recreation, City and County of Honolulu, do hereby certify that the foregoing is a full, true and correct copy of the **Amended Rules and Regulations Relating to the Limited Commercial Use of Parks and Park Facilities** which were adopted on October 2, 1992, following a public hearing held on September 22, 1992, after public notice was given on August 16, 1992, in the Sunday Star-Bulletin and Advertiser.

WALTER M. OZAWA, Director
Department of Parks and Recreation
City and County of Honolulu

Received this 13th day of
October, 1992.

RAYMOND K. PUA, City Clerk

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