

ORDINANCE NO. _____

BILL NO. _____ (2015)

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. Chapter 13.04, Maui County Code, is repealed.

SECTION 2. 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:

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Article I. General Provisions

13.04A.010 Purpose of the chapter. In the interest of preserving and protecting County parks and recreational facilities and their recreational, cultural, environmental, social, educational, historical, and economic benefit to the community, this chapter establishes policies and procedures regarding the use of parks and recreational facilities.

13.04A.020 Applicability and scope. A. Except as otherwise provided for in chapters 13.16 and 13.20 of this title, this chapter shall apply to all parks and recreational facilities within the County of Maui.

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 individual, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions of this chapter, or the application of this chapter to other individuals shall not be affected.

D. The director, or the director's authorized representative, shall implement and administer the provisions of this chapter.

13.04A.030 Definitions. For the purpose of this chapter, certain phrases and words are defined as follows:

"ADA" means the Americans with Disabilities Act of 1990.

"Advertising material" means signage, stickers, posters, flyers, brochures, banners, videos, displays, or any other means of promotion.

"Applicant" means an individual 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. An applicant shall be twenty one years of age for the consumption of an intoxicating liquor to be authorized at a park or recreational facility.

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

"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, including, but not limited to baseball fields, basketball courts, soccer fields, tennis courts, and other fields or courts.

"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. An authorized agent shall provide 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, including but not limited to sole proprietorships, joint ventures, partnerships, corporations, fraternal organizations, clubs, or any other profit or nonprofit entities, and includes all employees of the business who are acting on behalf of said business.

“Business location” means a permanent, fixed place of business located in the County identifiable by a tax map key number and street address. A post office box number is not sufficient to identify a fixed place of business.

“Camper” means an individual who remains or intends to remain at a park or recreational facility in order 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 whereby one or more individuals remain or intend to remain at the particular park or recreational facility in order to use the park or facility as overnight accommodations, as permitted by section 13.04A.210.

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

“Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape or whether the tobacco is flavored, adulterated, or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

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

“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, including, but not limited to, 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 of Hawaii 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 any County-operated facility generally utilized as a gathering place for meetings, socials, training and other activities.

“Consume any intoxicating liquor” means possess any bottle, can or other receptacle containing any intoxicating liquor, as defined in section 281-1, Hawaii Revised Statutes, which has been opened, or a seal broken, or the contents of which have been partially removed, unless such container is kept in the trunk of a vehicle, or kept in such other area of a vehicle not normally occupied by the driver or passenger if the vehicle is not equipped with a trunk, and a utility or glove compartment shall be deemed to be within the area occupied by the driver or passenger.

“County” means the County of Maui, State of Hawaii.

“County property” means any real or personal property owned by or under the management or control of the County or any County agency. County property shall include, but not be limited to: equipment and fixtures; streets and highways; parking areas; sidewalks, roadway shoulders, easements, and rights-of-way; recreational facilities and community centers; beach accesses; beach parks; and beaches, from the high water mark or vegetation line to the location where other private or public property rights begin or if a certified shoreline map recorded with the State of Hawaii exists, those areas indicated by the map.

“Department” means the department of parks and recreation of the County.

“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 sponsored” means all functions, activities, or events, solely sponsored by the department, or together with an individual 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 relative to the issued permit. All deposits must be paid by the applicant.

“Designated parks or recreational facilities” means parks and recreational facilities that are under the jurisdiction 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 of the County or an authorized representative.

“Dog park” means an enclosed area within a park that has been designated for use as an off-leash dog area.

“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, including but not limited to an electronic cigarette, electronic cigar, electronic

cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.

“Equipment” means tangible business property.

“Exclusive use” means the use of a park or recreational facility as designated in a permit issued by the department pursuant to this chapter which prohibits or restricts the availability of that park or recreational facility to others.

“Fees” means financial payment assessed by the department as specified in the annual budget ordinance. Fees include:

“Application fee” is a non-refundable fee charged to process a permit application. The application fee must be paid by the applicant.

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

“Permit fee” is a non-refundable fee required prior to issuance of any permit authorizing use of parks and recreational facilities. All permit fees must be paid by the applicant. (See Table 1 in section 13.04A.100.)

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

“Fundraising activity” means an event or activity sponsored and conducted by an individual, organization, or non-profit entity with all proceeds from the event or activity accruing to the cause pursuant to a permit issued by the department.

“Gymnasium” means any recreational facility utilized for indoor athletic activities such as basketball or volleyball.

“Individual” and “individual or organization” means persons, associations, clubs, joint ventures, trusts, partnerships, corporations or any group of individuals organized for a specific purpose.

“Intoxicating liquor” has the same meaning as liquor or intoxicating liquor as defined in section 281-1, Hawaii Revised Statutes.

“Law enforcement officer” has the same meaning as law enforcement officer as defined in section 710-1000, Hawaii Revised Statutes.

“League” means an organized group of teams or individuals that compete against each other over a period of thirty days or longer. Leagues include:

“Community league” means leagues organized by an individual 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.

“Department league” means leagues organized and operated by the department which do not assess registration or participation fees.

“Partnership league” means leagues organized by youth, senior or Americans with Disabilities Act (ADA) organizations 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. Partnership leagues shall obtain a general use permit issued by the department.

“Recreational league” means leagues organized by the department which assess registration or participation fees used solely to offset operating expenses such as equipment, officiating, and expenses through the Recreational Program Fund.

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

“Non-exclusive use” means the use of a park or recreational facility as designated in a permit issued by the department pursuant to this chapter which does not prohibit or restrict access or use of the remainder of any park or recreational facility by others.

“Nonprofit entity” means an entity which complies with section 501(c) of the Internal Revenue Code and any other requirements under federal, State and County law regulating the conduct of charitable or nonprofit organizations.

“Park” or “parks” means a public park located in, owned, and operated by the County, including, but not limited to, any park, park roadway, parking area, playground, athletic field, beach right-of-way, or tennis court, and other recreational areas under the control, management and operation of the department.

“Patron” means any individual who contracts to participate in ocean recreational activities.

“Permit” means written authorization by the director, or an authorized representative, to reserve a specific park or recreational facility, or a portion thereof, for the event or activity which restricts the general public’s use of the reserved area during the permitted event or activity. The following permits are authorized:

“Camping permit” means the use of a park or recreational facility for overnight accommodations by an individual eighteen years of age or older, or a nonprofit organization or group, for a period not exceeding four consecutive days. See article IV.

“Commercial ocean recreational activity (CORA) permit” means an ocean recreational activity conducted by a business for a patron in or on a County beach park or other County property.” See article VIII.

“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.

“General use permit” means events, activities, or leagues organized and sponsored by an individual, registered political candidate, political organization or nonprofit entity. Events and activities other than leagues shall not assess dues, registration or participation fees, or accept donations. Ongoing leagues (over thirty days) for youth, ADA and senior citizen organizations which assess fees solely to offset operating expenses require confirmation by the director.

“Government permit” means events or activities organized and conducted by the County or any other governmental agency, department or division thereof. No revenues shall be generated.

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

“Permittee” or “permit holder” means an individual, corporation, partnership, group or organization that has received written authorization to use a park or recreational facility through the issuance of a permit pursuant to this chapter.

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

“Recreational facility” means any building or other physical structure located in, owned, and operated by the County, including, but not limited to, swimming pools, gymnasiums, community centers, and/or pavilions used for recreational purposes and under the control, management, and operation of 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.

“Tobacco products” 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 an individual 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 subsection 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 those problems, effectiveness of actions taken, and any proposed future actions contemplated to be taken until such time as the park or recreational facility is reopened.

13.04A.060 Recreational program fund. There is established and created a fund to be known as the "Recreational Program Fund." Fees collected pursuant to this section, as set forth in the annual budget ordinance, shall be deposited in the Recreational Program Fund, shall be deemed appropriated upon receipt, and may be expended for purposes relating to the operation of recreational leagues by the department.

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 individual 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 dogs into recreational facilities, except for guide, signal/hearing, and service dogs, as defined in section 6.05.010 of this code.

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

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 individual 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 subsection 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. 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. Throw, cast, roll, catch, kick, or strike any object, including, but not limited to, frisbees, discs, boomerangs, baseballs, tennis balls, footballs, soccer balls, basketballs, croquet balls, bowling balls, golf balls, or any other ball or similar object.

2. Ride on roller skates, skate boards, bicycles, 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 individual at all times.

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

6. A dog deemed dangerous under chapter 6.04 of this code 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, provided that pet owners may provide water and training treats for their pets.

8. Feral animal colonies shall not be established or maintained.

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 individual 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.

5. Malu Ulu O Lele Park, located in Lahaina, Maui, Hawaii.

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 of Maui, 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 Permits policy. A. Permit required. Certain use or reserved use of a park or recreational facility is subject to the issuance of a permit. Any individual, 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 individual 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 director shall ensure the appropriate permit is issued, fees and deposits are collected, and use of parks and recreational facilities comply with this chapter.

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 twenty-four hours of these circumstances for rescheduling to occur with no additional fees.

13.04A.100 Permit procedure. A. Application. Any individual, 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. The application shall include the following:

1. The name of the individual 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 individual who will organize such activity and who will be responsible for its conduct.

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

5. The nature of the activity to be engaged in by the individual 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 subsection 13.04A.100(C). (See Table 1.)

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 and shall be paid 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.

Table 1 Fee and Deposit Due Dates per Permit Type	
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 said deposit.

b. Key deposits shall be forfeited to the department in the event that any key is not returned to the department within forty-eight hours, or the next business day, 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 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, including but not limited to, the prohibitions listed in section 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 said 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, including but not limited to, the prohibitions listed in section 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	
Government	N/A
Community Class	7 days
General Use	14 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 be nontransferable.

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 individual 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 of this code, 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. Subject to the issuance of a permit pursuant to article III, the director may rent department equipment to the permittee subject to payment of custodial deposits and fees as set forth in the annual budget ordinance. 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 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 of this code.

C. Temporary refreshment concessions may be authorized in accordance with section 3.40.190(A)(7) of this code, 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 individual or organization desiring to camp at a park must submit a written camping permit application available from the department, and may not camp until such a permit is issued.

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

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

13.04A.220 Camping fees. Any individual or organization 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 individuals 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, chapter 8.20, subsections 8.20.030(A), 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 of this code 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 individuals 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 an individual which may contain but is not limited to the following information:

1. A warning statement advising the individual that the individual'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, including, but not limited to, gender, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the individual 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 individual 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 individual 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 Maui Police Department shall be notified and the individual 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 convicted of violating any provision of this chapter, except sub-sections 13.04A.070(E), 13.04A.260, or subject to a penalty pursuant to subsection 13.04A.360, shall be fined not less than \$150 and not more than \$500.

B. Anyone convicted of violating section 13.04A.070(E) shall be fined not less than \$50 and not more than \$500.

C. Anyone convicted of Trespass pursuant to section 13.04A.260 is guilty of a petty misdemeanor as defined in section 701-107, Hawaii Revised Statutes, and may be sentenced to imprisonment for a term not to exceed thirty days.

Article VII. Commercial Ocean Recreational Activity

13.04A.280 Purpose. The purpose of this article is to regulate commercial ocean recreational activity to ensure that County beach parks are utilized for the community's maximum recreational, environmental, and economic benefit.

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 commercial ocean recreational activity without a permit.

B. If a business chooses not to obtain a permit pursuant to section 13.04A.330, a commercial special events permit, pursuant to article III, shall be obtained before a 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, including but not limited to 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 (including, but not limited to, 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 individual 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, including, but not limited to, the provision of salaries, the purchase of equipment, and the maintenance of County property."

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, chapter 6.08, section [13.04.040(D)] 13.04A.070(D) of this code, and chapter 143 of the Hawaii Revised Statutes."

SECTION 4. 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 5. This ordinance shall take effect October 1, 2015.

APPROVED AS TO FORM
AND LEGALITY:

JERRIE L. SHEPPARD
Deputy Corporation Counsel
2014-3156