

**COUNTY OF KAUA'I
DEPARTMENT OF PARKS AND RECREATION**

Under and by virtue of the authority conferred upon him by Chapter 91, Hawai'i Revised Statutes (HRS), Chapter 23, Article 3, Kaua'i County Code 1987, as amended, and every other enabling power, the Director of the Department of Parks and Recreation of the County of Kaua'i does hereby prescribe the following:

**RULES AND REGULATIONS
RELATING TO THE USE OF PARKS AND PARK
FACILITIES BY PEDDLERS AND CONCESSIONAIRES**

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- Section 1. Findings and Purpose.
- Section 2. Applicability and Scope.
- Section 3. Definitions.
- Section 4. Penalties.

PART II

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- Section 11. Revocation of Authorized Activity Designation.

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

PART I

Section 1. Findings and Purpose. Pursuant to Section 23-3.1 Kaua'i County Code (KCC) 1987, as amended, the Kaua'i County Council has found that peddling of wares and services on or near County parks, beaches, playgrounds and visitor sites have increased at an alarming rate primarily because a gathering of people means potential customers. When unregulated, such peddling, can become an intrusion upon people's enjoyment of a place or facility. The Council has further found that unregulated peddling has generated complaints by visitors and residents alike, that it is affecting the vital tourist industry by diminishing the visitor's experience on Kaua'i, and that it is interfering with island residents' quiet enjoyment of beaches, parks and other outdoor areas.

The purpose of these rules are to regulate peddlers at County parks, playgrounds, and other facilities and prohibit peddling on the beaches of Kaua'i.

Section 2. Applicability and Scope. These rules shall apply to all areas of the park system under the jurisdiction of the County of Kaua'i as defined in Section 19-1.3, KCC 1987, as amended. The purpose of these rules is to regulate peddling and concession operations that impact County parks.

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 by a peddler or concessionaire, 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, County of Kaua'i.

"Director" means the Director of the Department of Parks and Recreation, County of Kaua'i.

"Peddler" means a person or persons in the business of traveling about carrying goods, wares, food, or merchandise for sale and/or rental to consumers, or any person traveling about selling, renting, or offering for sale, or rent, soliciting orders for or inviting attention to or promoting in any manner whatsoever, directly or indirectly, goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services, or to distribute commercial handbills, or carry on or conduct any commercial promotional scheme, advertising programs or similar activity, or any person or persons in business of delivering food, foodstuffs, or refreshments to consumers at a place other than the peddler's fixed place of business, or any person or persons in the business of traveling about to deliver food, foodstuffs, or refreshments to consumers, or any person or persons engaged in the business or service of providing sport or recreational activities or rental of equipment therefor for commercial gain on either a fee basis or a donation in lieu of a fee and activities associated therewith, including but not limited to loading and unloading of passengers, transporting passengers, parking, or traversing over and through county parks.

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

Section 4. Penalties. Any person found in violation of these rules may be subjected to a fine not less than Two Hundred Dollars (\$200.00) and not more than Two Thousand Dollars (\$2,000.00) for each offense.

PART II

Section 5. Commercial Activities. All commercial activities within County parks are subject to a system of regulation. Only authorized commercial activities shall be allowed within County parks.

Section 6. Exception. Unless otherwise indicated, commercial activities which are authorized or controlled by concession, contract or are part of a County-sponsored program, other than that described herein, or are exempt under Section 23-3.4 KCC 1987, as amended shall not be subject to these rules.

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.

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.

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.

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 designating an appropriate permit fee;
- (2) Granting the authorized activity designation but imposing reasonable conditions thereto and designating an appropriate 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.

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.

PART III

Section 12. Permits. All authorized activities shall be conducted within the park system only with a valid permit. Duplicate copies shall not be honored.

Section 13. Fees. All permits shall be subject to a fee established under Section 10 of these rules.

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: 4444 Rice Street, Mo'ikeha Building, Suite 105, Lihue, Hawaii 96766.

(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 shall reflect the reasonable cost of administration of the activity by the County, or to meet other conditions as the Director or an authorized representative may prescribe to carry out the provisions of Chapter 23 Article 3 KCC 1987, 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 Chapter 23 Article 3 KCC 1987, 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) The applicant does not comply with the requirements established for issuance of a permit under Section 10 of these rules.

(9) 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) A permittee violates permit conditions or other provisions of these rules.

(4) Fees, as required, are not paid.

(5) The authorized activity designation is revoked.

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.

Section 18. Advertisements. Commercial notices or advertisements shall not be displayed, posted or distributed within the parks.

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 County of Kaua'i is prohibited.

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.

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 County Clerk.

PROMULGATION OF THE RULES AND REGULATIONS
RELATING TO THE USE OF PARKS AND PARK
FACILITIES BY PEDDLERS AND CONCESSIONAIRES

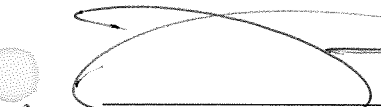
The Rules and Regulations Relating to the Use of Parks and Park Facilities by Peddlers and Concessionaires of the County of Kauai, State of Hawai'i were decided to be recommended for approval, pursuant to HRS 91-3 (2), thirty (30) days after the public hearing held by the Director of Parks and Recreation of the County of Kaua'i, State of Hawai'i on the 13th day of September 2011.

The rules shall become effective ten (10) days upon filing with the County Clerk of the County of Kaua'i.

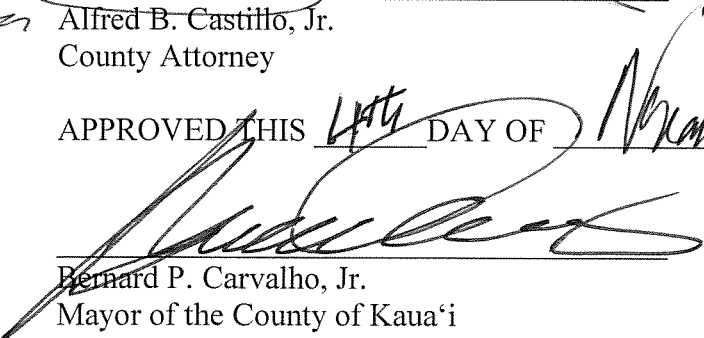
BY ORDER OF THE DIRECTOR OF PARKS AND RECREATION OF THE
COUNTY OF KAUA'I, STATE OF HAWAI'I.


Leonard A. Rapozo, Jr., Director of Parks and Rec.

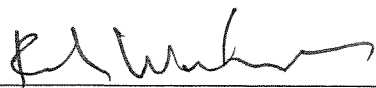
APPROVED AS TO LEGALITY AND FORM:


for Alfred B. Castillo, Jr.
County Attorney

APPROVED THIS 14th DAY OF November, 2011.


Bernard P. Carvalho, Jr.
Mayor of the County of Kaua'i

I HEREBY CERTIFY THAT THE FOREGOING RULES AND REGULATIONS
RELATING TO THE USE OF PARKS AND PARK FACILITIES BY PEDDLERS AND
CONCESSIONAIRES OF THE COUNTY OF KAUA'I WERE RECEIVED AND FILED IN
MY OFFICE THIS 8th DAY OF November, 2011.


Rick Watanabe, Interim County Clerk

PUBLIC NOTICE: August 23, 2011
PUBLIC HEARING: September 13, 2011