

COUNTY OF KAUAI DEPARTMENT OF PARKS AND RECREATION

Pursuant to the authority granted to the Director of Parks and Recreation under Kaua'i County Code section 19-1.18, section 23-3.3, section 23-3.5, and section 23-3.6, the Director proposes to amend the Department of Parks Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough and will appear in red. Proposed additions to existing Rules and Regulations are underlined. A public hearing on proposed amendments will be held on Tuesday, December 1, 2015 at the Moikeha Building Meeting Room A/B, 4444 Rice Street, Lihue, Kauai starting at 9:00am, or soon thereafter.

COUNTY OF KAUAI DEPARTMENT OF PARKS AND RECREATION

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

RULES AND REGULATIONS GOVERNING COMMERCIAL SURFING AND STAND-UP PADDLE INSTRUCTIONS AT COUNTY BEACH PARKS **PART V**

Section 37. Findings and Purpose. Pursuant to section 23-3.3 of the KCC and Section 8 of these rules and regulations, a public hearing was conducted to determine the propriety of the proposed use of facilitating commercial surfing and stand-up paddle instruction activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR) Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard at those County beach parks and beach right-of-ways listed in the attachment.

The Department duly received applications from various individuals and organizations to conduct these activities, pursuant to Section 7 of these regulations.

As a result of the public hearing, the Department finds that the proposed use of the County beach parks identified herein facilitates commercial activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR) Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard. The Department further finds the proposed use to be essentially recreational in nature, complementary to the facilities of the parks and consistent with established park use.

These activities are hereby designated authorized activities in accordance with the definition provided in these rules, subject to the limitations and conditions hereinafter described.

Section 38. State Permit.

In order to operate a commercial surfing and/or stand-up paddling class operators must have in their possession a current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, Department of Land and Natural Resources (DLNR), Division of

Boating and Ocean Recreation (DOBOR). If a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended, said permittee's County permit will automatically expire.

Section 39. Number of Persons.

(a) The maximum number of students permitted in a commercial surfing and/or stand-up paddling instruction activity authorized by these rules within the County park shall be limited to that number allowed in the operator's current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR) and any and all permits issued to the County, including but not limited to sma, zoning and/or land use permits.

Section 40. Time of Use.

(a) No commercial surfing and/or stand-up paddling instruction activity shall occur within the County parks on Sundays, or on holidays designated in Special Management Area Minor Permit SMA (M)-2013-23.

(b) Permittees shall limit their commercial surfing and/or stand-up paddling instruction activity within the County parks to the hours specified in Special Management Area Minor Permit SMA (M)-2013-23.

(c) Special events authorized by permit shall take precedence over commercial surfing and/or stand-up paddling instruction activity allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.

(d) At the Director's discretion, no commercial surfing and/or stand-up paddling instruction activity shall occur within the County parks during periods of maintenance or repair of County beach park property or equipment or when park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.

Section 41. Fees.

The fees for conducting commercial surfing and/or stand-up paddling instructions shall be as stated in section 23-3.4 of the KCC.

Section 42. Permits.

(a) Permits to conduct commercial surfing and/or stand-up paddling instructions shall be issued only for those County beach parks and beach right-of-ways listed in the attachment.

(b) Permits for operation of commercial surfing and/or stand-up paddling instructions shall have duration of up to one year and shall expire automatically, without notice to the permit holder, on the date specified on the permit and or if a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended.

(c) The director, or his authorized representative, may renew a permit for additional periods of up to one year provided the permittee is in compliance with all applicable rules. Permit renewal shall also be contingent upon the permittee renewing or attaining any necessary state and federal permits. A renewed permit shall be subject to the terms and conditions of these rules and any subsequent amendments.

(d) The Permittee shall notify the director within five (5) business days of any changes regarding the information provided in the permit application.

Section 43. General Conditions.

(a) Permittees must possess any and all license(s) required to conduct business in the State of Hawaii. Copies of all license(s) shall be provided to the Parks Permit Section of the Department prior to any permit being issued.

(b) Permittees must have in current force and effect an insurance policy, in which the combined limit of liability for bodily injury and property damage is \$1 million per occurrence and \$2 million in the aggregate. The insurance certificate shall name the County of Kauai as additional insured. A copy of the certificate shall be provided to the Parks Permit Section of the Department prior to any permit being issued. Permittee shall be responsible for providing the Department with an updated copy of the certificate of insurance if such certificate expires during the term of the permit.

(c) Permittees shall use inclement weather as criteria to cease operations (i.e. continuous rain, flash flood warning, strong currents, heavy debris and high winds, or any other weather or water conditions that may cause a hazard).

(d) Picnic tables and benches and other facilities owned by the County shall not be used by permittees for commercial purposes, nor shall they be used for storage or as a staging area for commercial surfing and/or stand-up paddling activities, equipment and/or supplies. Loading or unloading of equipment at County beach parks shall be restricted to areas designated by the Department. All equipment not being utilized shall be stored at the operator's place of business. Equipment shall not, under any circumstances, be dragged across grassy recreational surfaces and slopes within County parks. County showers and hose bibs shall not be utilized by the permittee for cleaning of equipment.

(e) Permittees shall not be allowed to store, display, show case their business in any County beach park or parking lot.

(f) Vehicles used for commercial surfing and/or stand-up paddling instruction activities shall not be driven onto or parked in any County beach area. All customers and/or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and/or employees shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for period not exceeding thirty minutes. All vehicles used for shuttling employees and/or customers shall clearly indicate that they are owned and operated in behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place. The following areas are designated by the Department as loading and unloading areas:

- 1) **Hanalei Pier Right of Way Access (State of Hawai'i) TMK 4-5-001:008**
- 2) **Hanalei Pavilion TMK 4-5-5-002:019**
- 3) **Waioli Beach Park/He'e Road Parking Lot TMK 4-5-5-003:21 & 4-5-5-004:002**
- 4) **Waioli Beach Park/Anae Road Parking Lot TMK 4-5-5-005:020**
- 5) **Weke Road Boat Ramp (SUP Only) TMK 4-5-5-001:999"**

(g) Trash generated by commercial operations shall be disposed of properly.

(h) Permittees shall at all times use due care for their clientele and other users and defend, hold harmless, and indemnify the County, its officers, agents, and employees from and against all claims or demands for damages, including claims for property damage, personal injury, or death arising out of or incident to the operations permitted under any permits.

(i) Soliciting and or conducting business is prohibited within any or the beach parks or parking lot.

(j) Commercial notices or advertisements for commercial surfing and/or stand-up paddling instruction activities shall not be displayed, posted or distributed within any of the beach parks or parking lot.

(k) Permittees and any employees operating under their permit shall be required to present their permit, when requested, to any authorized representative of the Department, any police officer and or any individual acting under the authority of any County, State of Federal governmental agency.

(l) Permittees shall be responsible for the safety of persons under their charge and for determining that their physical capability and experience are adequate to safely participate under the existing sea and surf conditions.

(m) Should it be adjudged that harm or death has resulted from the permittee's negligence or use of faulty equipment, the permit issued to the permittee shall be immediately revoked upon notice, review and consideration by the Department of Parks and Recreation without the possibility of future permits.

(n) All permittees must possess off site, permitted commercial staging areas and shuttle their customers to and from any County Beach Parks. Solicitation of moneys and or exchanging of moneys are prohibited within the County parks.

(o) Permittees shall comply with all Federal, State and County laws and ordinances and the rules of the Department.

(p) Permittees shall demonstrate to the Director's satisfaction their experience and familiarity with seasonal and high surf conditions typical of the location requested.

(q) Permittees shall complete a course provided by the Department regarding the customary and historical place names (reef, channels, rivers, landmarks, etc.) typical of the location and surrounding areas being requested.

(r) Permittees shall demonstrate to the director's satisfaction their personal years of experience, knowledge, and history of performing the requested activity for the specific location requested.

(s) Permittees and their patrons shall use designated pathways to gain access to the beach areas through park property.

(t) Permittees shall conduct operations so as to impose no more than minimal impact upon public facilities and the physical features of the County parks. No, washing or storage repair and or other maintenance of surfing and/or stand-up paddling instruction equipment and/or supplies are permitted in the County parks identified herein County parking lots or in road rights of way.

(u) Non-compliance with any and all terms and conditions of this agreement shall subject the permit holder to civil fines of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00) for each offense. Repeated non-compliance shall render this

agreement null and void, and the permittee shall be required to cease and desist all commercial operation immediately upon notification by the Department.”

(v) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation.”