

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, July 6, 2022, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihu'e, on the following:

Bill No. 2869

A BILL FOR AN ORDINANCE AMENDING CHAPTER 23, SECTION 23-3.7, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO CONCESSIONAIRES AT THE SPOUTING HORN

This Bill proposes to amend Chapter 23, Section 23-3.7, Kaua'i County Code 1987, as amended, relating to Concessionaires at Spouting Horn, by updating the status of the concession stands, removing the stall configurations and upset bid amount which will be addressed in Administrative Rules, and allowing the use of electricity by concessionaires.

Bill No. 2870

A BILL FOR AN ORDINANCE AMENDING CHAPTER 23, ARTICLE 3, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PEDDLERS AND CONCESSIONAIRES

This Bill proposes to amend Chapter 23, Article 3, Kaua'i County Code 1987, as amended, relating to Peddlers and Concessionaires, by defining a "Peddler's Permit", clarifying that the Department of Parks & Recreation issues such permits, and establishing the process by which fees will be set for such permits.

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of these Bills are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend these Bills at their subsequent meetings. Meeting notices are posted at least six (6) days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2869 and Bill No. 2870 were passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on June 1, 2022, by the following vote:

AYES:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
NOES:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i  
June 1, 2022

/s/ Jade K. Fountain-Tanigawa  
County Clerk, County of Kaua'i

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(One publication – The Garden Island – June 9, 2022)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 23, SECTION 23-3.7,  
KAUA'I COUNTY CODE 1987, AS AMENDED,  
RELATING TO CONCESSIONAIRES AT THE SPOUTING HORN**

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BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Purpose. The purpose of this Ordinance is to amend Chapter 23, Section 23-3.7, Kaua'i County Code 1987, as amended, relating to Concessionaires at the Spouting Horn by updating the status of the concession stands, removing the stall configurations and upset bid amount to be addressed in administrative rules, and allowing the use of electricity by concessionaires.

SECTION 2. Chapter 23, Section 23-3.7, Kaua'i County Code 1987, as amended, is hereby amended as follows:

**"Sec. 23-3.7 Concessionaires at the Spouting Horn.**

[(a) Contracts in existence on September 30, 2007 for the use of the nine (9) vending stalls are hereby extended under existing contract terms until March 31, 2008, or until the Department of Parks and Recreation finalizes its rules and regulations for peddling and concession operations, whichever occurs soonest. The contracts will be re-bid for a five (5) year term to end on June 30, 2013. Thereafter, the contracts will be re-bid in accordance with the provisions of Chapter 102, Hawai'i Revised Statutes and the rules and regulations for peddling and concession operations adopted by the Department of Parks and Recreation.]

[(b)] (a) Description of Spouting Horn Concession Stands.

(1) [Nine (9) concession stands at Po'ipū Spouting Horn Park shall be constructed in accordance with the plot plan attached hereto as Exhibit "A" and made a part hereof, and designed in accordance with the building configuration and numbered in sequence as illustrated in Exhibit "B." All nine (9) concession stands shall be subject to competitive bidding requirements.] The stall configuration and plot plan for the concession stands will be determined by the Director of Parks and Recreation via administrative rules.

(2) No [utilities (water or electricity)] water shall be permitted. The use of electricity may be allowed; provided the concessionaire covers all costs related to the concessionaire's electricity use.

(3) Parking stalls and loading zones within the Po'ipū Spouting Horn Park shall be made available to all concessionaires as determined by the Department of Public Works. The County Engineer shall install appropriate signs [marking] or markings, or both, identifying such parking stalls and loading zones.

(4) It shall be encouraged that the sale items at the concession stands be items made entirely or partly in Hawai'i.

[(c)] (b) Award of Concession Contracts.

(1) The [nine (9)] concession stands shall be subject to competitive bid individually by sealed bid of those persons qualified to bid as determined by the Director of Finance. [The upset bid for each of the nine (9) stands shall be two thousand five hundred dollars (\$2,500.00) per month.] The Director of Parks and Recreation shall establish the basis for the minimum upset bid for concession stalls in the Rules and Regulations Relating to the Use of Parks and Park Facilities By Peddlers and Concessionaires. Each concessionaire shall post a performance bond prior to being awarded a contract.

(2) The Director of Finance shall execute written contracts with the highest qualified bidders and otherwise follow the provisions of Chapter 102, Hawai'i Revised Statutes and the [rules and regulations for peddling and concession operations] Rules and Regulations Relating to the Use of Parks and Park Facilities By Peddlers and Concessionaires adopted by the Department of Parks and Recreation under the operational policy set forth in Sec. 23-3.3. The Director of [Finance] Parks and Recreation shall establish procedures for bidding, specifications for the contracts relating to operations, type of goods permitted for sale, structures and fixtures, maintenance, parking, signs, insurance, damage liability, sanctions for breach of contract and such other conditions as may be necessary or desirable for the orderly conduct of business that are consistent with rules and regulations developed under the operational policy set forth in Sec. 23-3.3. Said written contracts, procedures and specifications must be reviewed and approved by the Director of Finance and the County Attorney.

(3) New bidding shall be conducted for any vacancies. Concessionaires with existing concession stands may be permitted to bid, if it is deemed by the [Finance Director] Director of Finance to not be to the detriment of the County of Kaua'i. [If an existing concessionaire is permitted to bid, the concessionaire shall be awarded, upon the highest qualified bid that meets or exceeds the upset bid of two thousand five hundred dollars (\$2,500.00) per month, a concession stand in lieu of their existing concession stand.] Upon being awarded a new concession stand, such concessionaire shall surrender their existing concession stand. Bidding for said vacant concession stand shall follow the same rules as for new bidding as described herein.

[(d)] (c) Concession Prohibitions.

(1) It shall be unlawful to engage in concession operations without having a valid concession contract [or to transfer a concession contract without the approval of the Finance Director.].

(2) It shall be unlawful to transfer a concession contract without the approval of the Director of Finance.

[(2)] (3) It shall be unlawful to violate any of the rules and regulations adopted pursuant to Sec. 23-3.3, or any of the conditions contained in the concession contract.

[(3)] (4) It shall be unlawful to use [electricity or] water for concession operations.

[(e)] (d) Penalty. Any person convicted of violating any provision under Subsection [(d)] (c) shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2,000.00) for each offense.

[(f)] (e) The Director of Finance is hereby authorized to establish and create a fund to be known as the parks and recreation improvement and maintenance fund. In adopting each fiscal year's budget and capital program, the Council shall appropriate any fees paid and collected pursuant to this Section to the fund, which shall be used for repair, maintenance, and improvement projects for parks and recreation facilities. The fees shall not be used for salaries and other personnel expenses. The fees in the parks and recreation improvement and maintenance fund shall not lapse at the close of the fiscal year."

SECTION 3. Chapter 23, Section 23-3.7, Kaua'i County Code 1987, as amended, is hereby amended by deleting the attached Exhibit "A" and Exhibit "B".

SECTION 4. If any provisions of this Ordinance or the application thereof to any persons or circumstance are held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or application and, to this end, the provisions of this Ordinance are severable.

SECTION 5. Ordinance material to be repealed is bracketed. New material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring need not be included.

SECTION 6. This Ordinance shall take effect upon its approval.

Introduced by:



BERNARD P. CARVALHO, JR.  
(By Request)

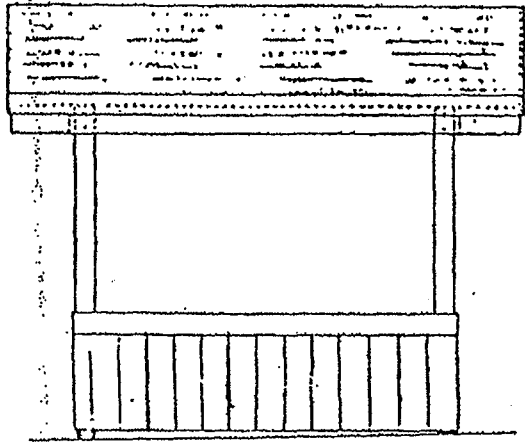
DATE OF INTRODUCTION:

**June 1, 2022**

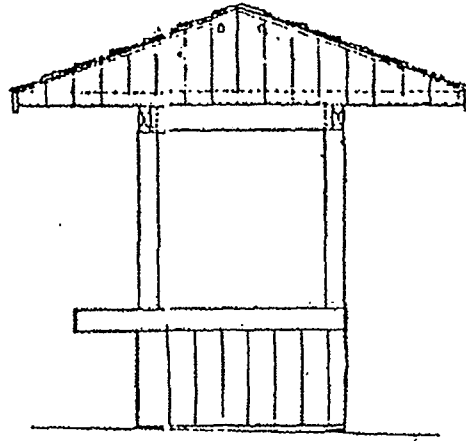
Līhu'e, Kaua'i, Hawai'i

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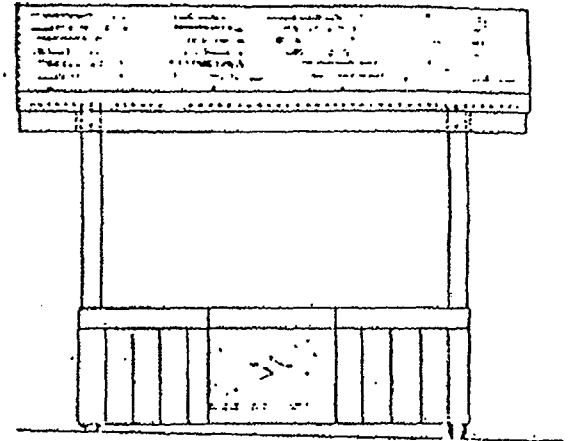




FRONT VIEW



SIDE VIEW



REAR VIEW

NOT TO SCALE

Exhibit "B"

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2869, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on June 1, 2022, by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
AGAINST PASSAGE:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i  
June 1, 2022



Jade K. Fountain-Tanigawa  
County Clerk, County of Kaua'i



**A BILL FOR AN ORDINANCE AMENDING CHAPTER 23, ARTICLE 3,  
KAUA'I COUNTY CODE 1987, AS AMENDED,  
RELATING TO PEDDLERS AND CONCESSIONAIRES**

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BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Purpose. The purpose of this Ordinance is to amend Chapter 23, Article 3, Kauai County Code 1987, as amended, relating to Peddlers and Concessionaires by defining a "Peddler's Permit", clarifying that the Department of Parks and Recreation issues such permits, and establishing the process by which fees will be set for such permits.

SECTION 2. Chapter 23, Section 23-3.2, Kaua'i County Code 1987, as amended, Definitions, is hereby amended as follows:

"When used in this Article the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

"Concession" means the grant to a private individual, partnership or corporation of the privilege for a fee to conduct operations essentially retail in nature, involving the sale and/or rental of goods, services, wares, novelties or any merchandise to consumers in or on land or structures owned or controlled by the Department of Parks and Recreation.

"Concession stands" mean structures owned or controlled by the County of Kaua'i which uses are granted to private individuals, partnerships, or corporations for a fee to conduct operations essentially retail in nature involving the sale and/or rental of goods, services, wares, novelties, or any merchandise to consumers.

"Concessionaire" means a private individual, partnership, or corporation that has been granted the privilege for a fee to conduct operations essentially retail in nature involving the sale and/or rental of goods, services, wares, novelties, or any merchandise to consumers in or on land or structures owned or controlled by the Department of Parks and Recreation.

"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.

“Peddler’s Permit” means a permit issued by the Department of Parks and Recreation, as authorized by HRS Section 445-141, that licenses a person or persons to engage in peddling in the locations and according to the terms set forth in the permit.

“Peddling” means the carrying on of business by a peddler.”

SECTION 3. Chapter 23, Section 23-3.3, Kaua’i County Code 1987, as amended, Operational Policy, is hereby amended as follows:

“The Director of Parks and Recreation is authorized and shall establish rules and regulations for peddling and concession operations[.] in County parks, playgrounds, beaches, roads, parking lots, and other facilities and areas subject to, or adjacent to, facilities under the jurisdiction of the Department of Parks and Recreation, including unpaved roadway areas adjacent to parks and any area subject to Department of Parks and Recreation jurisdiction between the ocean and the abutting property line. Such rules and regulations shall include a requirement to conduct public hearings during which input by the local community, cumulative impacts from individual and commercial uses of County lands, and cumulative impacts from individual and commercial uses on Special Management Areas (SMA) shall be considered. Such rules and regulations shall also address clean-up, maintenance, parking, signage, insurance, damage liability, and other matters deemed necessary or desirable for the orderly control of peddlers and concession operators and for the protection of the County at County parks, playgrounds, other facilities and beaches. All such rules regarding Spouting Horn concessionaires must be effective before March 31, 2008. Nothing in this Section shall prohibit the additional assessment of charges for items of County cost to the peddler or concession operator.”

SECTION 4. Chapter 23, Section 23-3.4, Kaua’i County Code 1987, as amended, Peddling License Fee; Exemptions, is hereby amended as follows:

“Sec. 23-3.4 Peddling [License Fee] Permit; Exemptions.

[(a) Beginning January 1, 2008, all persons who wish to engage in peddling activity shall have a valid peddler’s license. The annual fee for a peddler’s license as provided for in Section 445-141, Hawai’i Revised Statutes, shall be one hundred dollars (\$100.00), except that no license fee shall be required of persons who are of the minimum age of sixty (60) years, or anyone who peddles fish, fresh fruit, lei, flowers or vegetables. No license issued under this Section shall be transferable. The license shall authorize only the named licenses and no other person to engage in peddling activity and shall authorize peddling only at the locations or along routes

noted on the license. All licenses shall at all times keep the license exposed to view, in a prominent place and convenient for inspection while engaged in peddling activity. All licenses shall also comply with the requirements of Chapter 237, Hawai'i Revised Statutes, General Excise Tax Law and any other State laws.]

(a) All persons who wish to engage in peddling activity in County parks, playgrounds, beaches, roads, parking lots, and other facilities and areas subject to, or adjacent to, facilities under the jurisdiction of the Department of Parks and Recreation, including unpaved roadway areas adjacent to parks and any area subject to Department of Parks and Recreation jurisdiction between the ocean and the abutting property line, shall have a valid Peddler's Permit. Unless otherwise established in rules established by the Director of Parks and Recreation pursuant to Section 23-3.3, the fee for a Peddler's Permit shall be one hundred dollars (\$100.00) per year. No permit issued under this Section shall be transferable. The permit shall authorize only the named permittees and no other person to engage in peddling activity, and shall authorize peddling only at the locations or along routes noted on the permit. All permittees shall at all times keep the permit exposed to view, in a prominent place and convenient for inspection while engaged in peddling activity. All permittees shall also comply with the requirements of Chapter 237, Hawai'i Revised Statutes, General Excise Tax Law and any other State laws.

(b) Notwithstanding any law to the contrary, any concession or permits, granted by the State for any activity shall be exempted from the provisions of this Article."

SECTION 5. Chapter 23, Section 23-3.5, Kaua'i County Code 1987, as amended, Peddling Prohibition; Prima Facie Evidence, is hereby amended as follows:

"(a) It shall be unlawful to violate any of the rules and regulations adopted pursuant to Sec. 23-3.3.

(b) It shall be unlawful to: [engage in peddling without a valid peddler's license in the peddler's possession, or to operate at a location not authorized thereby, or to transfer a peddler's license to another, or to alter or possess an altered peddler's license.]

(1) Engage in peddling in County parks, playgrounds, beaches, roads, parking lots, and other facilities and areas subject to, or adjacent to, facilities under the jurisdiction of the Department of Parks and Recreation, including unpaved roadway areas adjacent to parks, without a valid Peddler's Permit in the peddler's possession;

(2) Engage in peddling in any area subject to Department of Parks and Recreation jurisdiction between the ocean and the abutting property line, including but not limited to parking lots and County parks, without a valid Peddler's Permit in the peddler's possession;

(3) Operate at a location not authorized by a Peddler's Permit;

(4) Transfer a Peddler's Permit to another; or

(5) Alter or possess an altered Peddler's Permit.

[(c) Peddling shall be unlawful without a permit issued by the Director of Parks and Recreation within County parks, playgrounds, beaches, roads, parking lots, and other facilities and areas subject to, or adjacent to, facilities under the jurisdiction of the Department of Parks and Recreation, including unpaved roadway areas adjacent to parks.

(d) Peddling shall be unlawful without a permit issued by the Director of Parks and Recreation in any area subject to Department of Parks and Recreation jurisdiction between the ocean and the abutting property line, including, but not limited to, parking lots and County parks on the island of Kaua'i.

(e) (c) Prima Facie Evidence; Peddling. The presence of a peddler without a [permit issued by the Director of Parks and Recreation] Peddler's Permit in any areas described in either Subsection [(c)] (b)(1) or [(d)] (b)(2) of this Section, with the peddler's or his/her employer's goods, wares, novelties, merchandise, foodstuffs, refreshments, or other property or services shall constitute prima facie evidence of peddling, in violation of said Subsection."

SECTION 6. If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 7. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 8. This Ordinance shall take effect upon its approval.

Introduced by: /s/BERNARD P. CARVALHO, JR.  
(By Request)

DATE OF INTRODUCTION:

**June 1, 2022**

Līhu'e, Kaua'i, Hawai'i

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