

## **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 (KCC) 1987 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 BOATING ACTIVITIES AT COUNTY BEACH PARKS** **PART IV**

#### **Section 23. 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 boating 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 designated County beach parks and beach rights-of-way.

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 DLNR/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 24. State Permit.**

In order to operate a commercial boating activity operators must have in their possession a current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, DLNR/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 25. Number of Persons.**

- (a) The maximum number of passengers permitted to participate in a commercial boating 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, DLNR/DOBOR and any and all permits issued to the County, including but not limited to SMA, zoning and or land use permits.

#### **Section 26. Time of Use.**

- (a) No commercial boating activities shall occur within the County parks on Sundays.

- (b) Commercial boating activities are permitted one-half hour before sunrise to one-half hour after sunset. No commercial boaters shall operate one-half hour after sunset to one-half hour before sunrise.
- (c) Special events authorized by permit shall take precedence over commercial boating activities 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 boating activities shall occur within the County parks during periods when maintenance or repair of County beach park property or equipment is being performed or when a park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.

**Section 27. Use Areas.**

- (a) The use of Weke Boat Ramp for supply service vessels shall be allowed during the permitted timeframe referenced in 33(b).
  - (1) Each Permittee shall be allowed no more than two supply service vessel trips per day.
  - (2) Supply service vessels launching from Weke Boat Ramp shall only be used to transfer supplies to and from Permittee's primary tour vessel. Supply service vessels shall not be used for passenger loading and unloading at Weke Boat Ramp.
- (b) In the event of an emergency, Weke Boat Ramp may be accessed. Permittee shall notify DOPR officials as soon as practicable.
  - (1) An emergency shall be defined as an unexpected situation requiring immediate action involving injury, loss of life, damage to the property, or catastrophic interference with normal activities.
- (c) Passengers shall be loaded and unloaded at specified ingress/egress locations described in Hawai'i Administrative Rules (HAR) § 13-256-39. Additionally, loading and unloading of passengers and provisions shall be allowed along the river side at Black Pot Beach Park in the accreted sand area extending westward from Weke Boat Ramp to Zone 2 of the ingress/egress area as defined by DLNR/DOBOR.
- (d) No loading and unloading of passengers shall be allowed within the Weke Boat Ramp corridor.
  - (1) The Weke Boat Ramp corridor shall be defined as the width of the Weke Boat Ramp, beginning at the constructed ramp itself extending 150 feet northward into the river.
- (e) No loading and unloading of passengers shall be allowed within the designated DLNR/DOBOR swimming areas B-1 and B-2, as defined in HAR § 13-256-39.

**Section 28. Fees.**

The fees for conducting commercial boating activities shall be as stated in section 23-3.4 of the KCC.

**Section 29. Permits.**

- (a) Permits to conduct commercial boating activities shall be issued only for the following County beach parks and beach rights-of-way:

Black Pot Beach Park; TMKs (4) 5-5-01:004 and (4) 5-5-01:011;

Weke Road Right-of-Way within Black Pot Beach Park

- (b) Permits for operation of commercial boating activities shall have a 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 business days of any changes regarding the information provided in the permit application.

**Section 30. General Conditions.**

- (a) Permittees must possess any and all license(s) required to conduct business in the State of Hawai'i. 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 \$2 million per occurrence and \$2 million in the aggregate. The insurance certificate shall name the County of Kaua'i 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 boating 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, or showcase their business in any County beach park or parking lot.
- (f) Vehicles used for commercial boating activities shall not be driven onto or be 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 a period not exceeding thirty minutes. All vehicles used for shuttling employees, supply service vessels, and or customers shall clearly indicate that they are owned and or operated on behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place.

- (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) Permittees shall not solicit business within any beach park, beach park parking lot, or adjacent County road right-of-way.
- (j) Commercial notices or advertisements for commercial boating 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 or 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 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 park. Solicitation of moneys and or exchanging of moneys is 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 demonstrate to the Director's satisfaction their personal years of experience, knowledge, and history of performing the requested activity for the specific location requested.
- (r) Permittees and their patrons shall use designated pathways to gain access to the beach areas through park property.
- (s) 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 fueling, washing or storage of boats, trailers or supplies are permitted in the County parks identified herein, County parking lots, or in road rights-of-way.
- (t) Non-compliance with any and all terms and conditions of these rules and regulations or permits issued under these rules and regulations 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 result in the revocation of any permit issued under these rules and regulations, and the permittee shall be required to cease and desist all commercial operations on County property immediately upon notification by the Department.

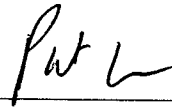
(u) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation.

PROMULGATION OF THE RULES AND REGULATIONS GOVERNING COMMERCIAL BOATING ACTIVITIES AT COUNTY BEACH PARKS

The Rules and Regulations Governing Commercial Boating Activities at beach parks of the County of Kaua'i, State of Hawai'i were decided to be recommended for approval, pursuant to HRS 91-3 (2), one hundred forty (140) 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 3<sup>rd</sup> of September 2019.

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.



Patrick T. Porter, Director of Parks and Recreation

APPROVED AS TO FORM AND LEGALITY:



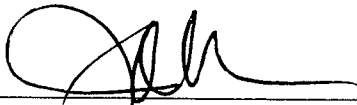
For Matthew M. Bracken  
County Attorney

APPROVED THIS 12<sup>th</sup> DAY OF February, 2020.



Derek S. K. Kawakami  
Mayor of the County of Kaua'i

I HEREBY CERTIFY THAT THE FOREGOING RULES AND REGULATIONS GOVERNING COMMERCIAL BOATING ACTIVITIES AT COUNTY BEACH PARKS WERE RECEIVED AND FILED IN MY OFFICE THIS 24<sup>th</sup> DAY OF February, 2020.



Jade K. Fountain-Tanigawa, County Clerk

PUBLIC NOTICE: August 2, 2019

PUBLIC HEARING: September 3, 2019