

IEM Committee

From: Theo Morrison <theo@lahainarestoration.org>
Sent: Monday, September 17, 2018 7:49 AM
To: IEM Committee
Cc: Brianne Zanin; 'Roxanne Teshima'
Subject: information for IEM committee members
Attachments: Lahiana Banyan Tree Park - Problems and Solutions.pdf; IAHAINA BANYAN TREE PARK FESTIVAL RULES (9-14-18).pdf; ATTACHMENT A.pdf; ATTACHMENT B.pdf; ATTACHMENT C.pdf; ATTACHMENT D.pdf; Release and Indemnity - September 13 2018.pdf

Please distribute to IEM committee members. Please note this is a DRAFT

Mahalo

Theo Morrison
Executive Director
Lahaina Restoration Foundation
120 Dickenson Street
Lahaina, HI 96761
808-661-3262
theo@lahainarestoration.org

September 16, 2018

LRF is proposing the attached DRAFT rules to curb the problems occurring at Lahaina Banyan Tree Park. Ironically, these rules are not “new”. They are long standing rules created by CRC, Arborist Committee and DLNR. Unfortunately, no oversight or enforcement mechanism was ever created. Therefore, abuses continued unabated until CRC called a halt to all events at the park as of June 30, 2018.

It is our intention, that if adopted, these rules will eliminate the existing problems and will increase the cultural, educational and recreational aspects of these events.

Lahaina Banyan Tree Park – Problems and Solutions

Excessive activity under the Banyan Tree:

Currently, events have been occurring 94 days out of the year. This is weekends and holidays. We propose only 3 weekends (Sat & Sun) per month. NO holidays. This proposal will reduce the number of days the park is used to 72 – a reduction of 22 days.

Non-enforcement of park rules:

The Park Administrator (LRF) will provide onsite inspection to ensure that the Nonprofit Festival Managers enforce the rules. If they do not, they will lose their opportunity to manage festivals at the Park. Non-profit festival managers are required to have an onsite manager who is in the park for set up, festival and break down.

Artists parking in street parking stalls all day:

Artists are required to use off street parking. Penalties for not doing so will be elimination from participating in the event.

Disrepair in Banyan Tree Park:

Festivals will pay \$1,000 per weekend to Festival Administrator to be used exclusively for increased maintenance and improvements to Banyan Tree Park

Only about selling:

Festivals will be required to schedule Hawaiian/Polynesian music or entertainment from 10 to 2 pm both days of the festival and have an educational table with a qualified expert a minimum of 2 hours both days of the festival. The educational activity must be free. A supply fee may be charged to adults, but keiki would be given free supplies.

Lack of Financial Transparency:

Festival Nonprofit managers will be required to submit financial and activity reports to LRF who will submit to County of Maui Department of Parks and Recreation.

LAHAINA BANYAN TREE PARK FESTIVAL RULES

DRAFT 9-14-18 updated

Purpose: Festivals at Lahaina Banyan Tree Park will produce an authentic, cultural, educational and engaging experience for residents and visitors and a fun, relaxing day for families

Festival Administrator: Lahaina Restoration Foundation will serve as Festival Administrator and will hold the lease (pending) for Lahaina Banyan Tree Park.

Festival Administrator: The Festival Administrator will ensure compliance with Festival Operation Rules which are based on written criteria from CRC (August 11, 2004), Arborist Committee (July 21, 2004) and DLNR (February 25, 2000). The Festival Administrator will collect Festival fees and budget 100% of the fees for Lahaina Banyan Tree Park maintenance and improvements.

Public Benefit: The Festivals will be managed by approved 501c Nonprofit Organizations who will pay a park Festival fee of \$500 per day to be used exclusively for improved maintenance and upgrades to Lahaina Banyan Tree Park. A percentage of Festival sales revenue will go to the approved 501c Nonprofit Organizations to further their stated mission.

FESTIVAL OPERATION RULES

General Information, Dates, Hours

1. Festivals will be held the first, second and third Saturday and Sunday of each month.
2. Festivals will not be held on holidays unless a holiday falls on the first, second or third Saturday or Sunday.
3. Festivals cancelled by the Festival Administrator due to weather or other reasons will be rescheduled on the next available fourth Saturday and Sunday.
4. Festival hours are 9 am to 5 pm.

5. Booth set up may start at 7 am. Break down **must** be complete at 7 pm each day.
6. Festivals are limited to a total of 25 booths.
7. Food booths, but no food trucks, are allowed as part of the 25-booth limit.
8. Only one artist is allowed per booth.
9. Each booth can be no larger than 10' X 10'. Canopy tents are OK.
10. Each Festival will be managed and coordinated by an approved 501c Nonprofit Organization.
11. No signs shall be displayed advertising any portion of the event except for an approved banner between The Wharf Cinema Center and Banyan Tree Park.
12. Booths must be staffed the entire time the Festival is open to the public.
13. Smoking of tobacco, illegal drugs or consumption of alcohol are NOT allowed at Festivals.
14. Artists may not bring pets to the Festivals.

Entertainment and Education Table

15. Festivals must include live Hawaiian or Polynesian music from 10 am to 2 pm each day.
16. Pre-recorded music is not allowed at the Festivals.
17. Festivals must include a designated, free, educational table, preferably with "hands on" activities, and a qualified staff person for a minimum of two hours each Festival day.
18. A supply fee may be charged for any "hands-on" **adult** educational activity with payment made inside the Old Lahaina Courthouse utilizing the 3-part receipt book. However, all supplies for keiki educational activities **MUST** be provided at no charge.

Handmade in Maui County by a Maui County Resident Artist

It is of utmost importance, and a REQUIREMENT, that ALL art sold and displayed at the Lahaina Banyan Tree Park Festivals is made in Maui County by the Maui County resident artist exhibiting in the booth. All artists wishing to participate in the Lahaina Banyan Tree Park Festivals

must receive approval from the Lahaina Banyan Tree Festival jurying committee, which meets quarterly before participating in the Lahaina Banyan Tree Park Festivals. (See attachment A)

Sales

19. All sales transactions shall be conducted inside the Old Lahaina Courthouse at the Lahaina Visitor Center or the Banyan Tree Gallery.
20. All sales transactions will be conducted with a 3-part receipt book. (See Attachment B for procedures)

Artist and Booth Rules

1. Each artist must register with no more than two of the approved Nonprofit Organizations managing a Festival.
2. Each artist can only participate in the Festivals organized by not more than two approved Nonprofit Organizations with which they are registered.
3. Artist must have lived in Maui County for at least one year prior to applying to participate in the festivals.
4. Each artist must complete a State of Hawaii Certificate of Vendor Compliance as part of the application process.
5. Each artist must attend an orientation given by the approved Nonprofit Organization prior to participating in any Festival .
6. Each artist must attend an annual training session coordinated by the Festival Administrator scheduled in December.
7. Once a year, only during the month of November, after the schedule of Festivals is made public, artists may change their registration and apply to not more than two approved Nonprofit Organizations if they wish.
However, an artist can only be registered with no more than two Nonprofit Organizations at any one time.
8. Any piece of art, even if made by the artist, that is very similar to, is a copy of, or could be mistaken for an imported object is not allowed to be sold at the Festival.
9. Extra inventory, storage of boxes etc. must be concealed under tables
10. Signs pertaining to artist's work can only be displayed inside artist booth.

11. Each booth **MUST** be staffed by the exhibiting artist. The artist may have a helper assisting.
12. All booths must be of a temporary nature and installed no earlier than the day of the event and removed at the close of each Festival day.
13. All booths must be neat and professional in appearance.
14. Tents or displays cannot be staked into the ground. Sandbags, water jugs or other means of securing tents must be used.
15. Artists are responsible for removing all trash and cleaning up their exhibit space at the end of the Festival. The oak barrel trash cans in the park are for pedestrian use only and **cannot** be used for artist's trash. "Pack it in – Pack it out."
16. Artists may load and unload around Banyan Tree Park, but they are then **REQUIRED** to move their vehicle to **off street parking**. Artists may not "save" parking stalls by placing chairs or other objects in the space.

LAHAINA BANYAN TREE PARK FESTIVAL RULES

NONPROFIT ORGANIZATION FESTIVAL MANAGEMENT RESPONSIBILITIES

1. Nonprofit Organizations must be tax exempt 501c Nonprofit Organizations
2. All Nonprofit Organizations must complete a Festival Management application which must be approved by the Festival Administrator. (see attachment C)
3. All Nonprofit Organizations must participate in an annual training in December conducted by Festival Administrator.
4. Management of Banyan Tree Park Festivals is open to all approved 501c Nonprofit Organizations based in Maui County
5. All Nonprofit Organizations must provide a **demonstrated public benefit** to the Lahaina Community and to the citizens of Maui County (DLNR requirement)
6. The activities of the Nonprofit Organization shall have a **significant educational component** (DLNR requirement)
7. Acceptance of the artist by the Nonprofit Organization is at the discretion of the Nonprofit Organization as long the process is fair, unbiased, based on written criteria and does not discriminate based on race, color, ancestry, national origin, religion, creed, sex, sexual orientation, disability, age, marital status, arrest and court record, National Guard participation or HIV infection.
8. The Festival Administrator shall review and approve all criteria used to determine who may participate in a Nonprofit Organization's Festival.
9. Cancellation of any Festival reservation must be received by the Festival Administrator no later than fourteen (14) days prior to the scheduled Festival day to receive a full refund.
10. The application window for non-profits that wish to organize Festivals for the following year shall be published annually in July and applications accepted the first two weeks in August for the following calendar year.
11. The Nonprofit Organization is required to:

- a. Pay a Festival fee of \$500 per day to the Festival Administrator no later than thirty days prior to scheduled Festival.
- b. Register artists annually to participate in their festivals and provide the artists with festival rules, accounting procedures etc.
- c. Collect sales revenue, shipping charges (if any) and GET at the Lahaina Visitor Center or the Banyan Tree Gallery.
- d. Handle any merchandise returns, charge backs, customer complaints.
- e. Pay GET payment monthly to Hawaii State Tax Collector on Lahaina Banyan Tree Park Festival sales.
- f. Hire and schedule Hawaiian or Polynesian music/entertainment to perform from 10 – 2 each day of the Festival.
- g. Provide sound system for musicians if they do not have their own.
- h. Provide 15 or more chairs for the audience.
- i. Hire and schedule educator to conduct educational activities a minimum of two hours per day each day of the Festival.
- j. Keep separate accounting records for all Lahaina Banyan Tree Park Festival revenue and expense
- k. Provide/sell each artist a 3-part receipt book for conducting sales.
- l. Provide liability insurance for the Festival for a minimum of two million dollars naming the County of Maui, State of Hawaii and The Lahaina Restoration Foundation as additional insured.
- m. Provide copy of GE license or agreement with GE license holder to process sales.
- n. Provide a State of Hawaii Certificate of Vendor Compliance annually.
- o. Provide quarterly activity and financial reports to Festival Administrator. (See Attachment D)
- p. Designate an onsite manager each day of the Festival to enforce Festival Rules. Manager will be onsite during setup, Festival and breakdown.
- q. Use the word "Festival" when marketing Lahaina Banyan Tree Park Festivals. The words Craft fair, Arts and Crafts Fair Swap Meet etc. are not allowed.
- r. Promote the Festivals including artists, entertainment and education activities via local media, social media, visitor industry etc.

- s. Obtain a permit from the County of Maui Planning Department and follow all regulations if a banner is to be hung between The Wharf Cinema Center and Banyan Tree Park.
- t. Get health permit and follow all State of Hawaii health dept. rules if food booths are included in a festival.

Special Rules for Banyan Tree Park

All Festivals shall abide by the Maui County Code Chapter 13.04A, including but not limited to:

- a. No climbing on the tree (per arborist committee)
- b. No swinging from the roots of the tree (per arborist committee)
- c. No motorized vehicles are allowed in the park
- d. No nailing or stapling is permitted on the tree.
- e. No cooking or fires are permitted under the canopy of the tree
- f. No fireworks are permitted under the canopy of the tree.
- g. No feeding of animals or staging of food or water for animals.

FESTIVAL ADMINISTRATOR RESPONSIBILITIES

1. Collect park Festival fee from approved Nonprofit Organizations at least 30 days in advance of Festivals per annual schedule.
2. Budget Festival fees for park maintenance and improvements
3. Submit quarterly activity and financial reports to County Parks Dept.
4. Review and approve application used to determine who may participate in an approved Nonprofit Organization's Festival.
5. Monitor Festival operations through onsite inspections.
6. Enforce the Festival Operation Rules if Nonprofit Organizations fail to do so.
7. Coordinate an annual training in December for artists and another training for approved Nonprofit Organizations to include Festival operations and rules, historic district protocol, Lahaina history.
8. Create annual Lahaina Banyan Tree Park Festival schedule by **October 15** through an open lottery with approved Nonprofit organizations. Events with a tradition of certain dates (for example – Lighting of the Banyan

Tree on first Saturday in December) will have first preference for those dates. All other Festival dates will be “drawn from a hat” with each registered Nonprofit Organization having equal opportunity to draw. The annual Lahaina Banyan Tree Park Festival Schedule will be published by the Festival Administrator in November of each year for the following year.

ENFORCEMENT

1. Any approved Nonprofit Organization found violating or not enforcing any identified Festival rules shall be suspended from conducting the remaining Festivals on the published annual calendar and shall not be approved for Festival management for the subsequent calendar year.

RULES ARE SUBJECT TO CHANGE AND UPDATES

1. From time to time, these Festival rules may be changed and updated with one-month notice given to the approved Nonprofit Organizations managing the festivals.

Lahaina Banyan Tree Park Festivals

Mandatory Jurying Procedures for Artists

It is of utmost importance, and a REQUIREMENT, that ALL art sold and displayed at the Lahaina Banyan Tree Park Festivals is made in Maui County by the Maui County resident artist exhibiting in the booth. All artists wishing to participate in the Lahaina Banyan Tree Park Festivals must receive approval from the Lahaina Banyan Tree Festival jurying committee, which meets quarterly before participating in the Lahaina Banyan Tree Park Festivals.

The Jurying process will verify that the art work is of high quality, not a copy or imitation of an imported object and was handmade by the artist in the County of Maui.

Jurying will be held quarterly in the months of February, May, August, November. Exact date to be announced through social media, newspaper, nonprofit festival managers etc.

The jurying committee will be composed of 3 or more qualified individuals, selected by the Festival Administrator, with extensive experience and education in all aspects of art and art sales. (the word “art” includes what is commonly referred to as ‘crafts’). **The decision of the jurying committee is final.**

Jurying Criteria:

1. Verification that work was created by the artist in Maui County (to be accomplished with a physical examination of five samples of the product and brief interview)
2. Good workmanship
3. Originality

JURYING TIMELINE

1. Artist must submit 5 physical samples of work and 5 photographs of work to the jury committee.
2. Jury dates will be in February, May, August, November (exact dates to be announced)
3. Once accepted by the Lahaina Banyan Tree Park Festival Jurying committee, the artist must then apply to the Nonprofit Organizations managing the festivals. The Nonprofit Organizations will make the final decision on the artist's acceptance into their schedule of festivals. Artists may only exhibit and sell their artwork at the Festivals of two approved Nonprofit Organizations. This is to prevent an artist from selling at every scheduled Festival, and to allow new artists an opportunity to participate in the Festivals.
4. Once a year, only during the month of November, after the schedule of Festivals is made public, artists may change their registration and apply to a different qualified non-profit if they wish. However, an artist can only be registered with a maximum of two nonprofit organizations at any one time.

Lahaina Banyan Tree Park Festivals

Artist Receipt Instructions

Under NO circumstances may money be exchanged in Lahaina Banyan Tree Park!

Please use the receipt system and send all buyers inside the Old Lahaina Courthouse to either the Lahaina Visitor Center or the Banyan Tree Gallery. The Nonprofit Organization with which you are registered will let you know which location to use.

You must purchase a carbonless three-part receipt book in the Lahaina Visitor Center or the Banyan Tree Gallery. (the \$5 charge will be deducted from your check)

- Put your ID number, Name and Date on each receipt in the 3-part receipt book
- List each of the items sold and their price on the receipt. Do NOT add the tax – the cashier will add it at the register.
- Subtotal your items
- Circle the subtotal
- Give the WHITE and YELLOW copies of the receipt to your customer and instruct the customer to go into either the Lahaina Visitor Center or the Banyan Tree Gallery. When the customer pays, the cashier will keep the white copy and stamp the yellow copy. The cashier will give the customer a cash register receipt to keep and will give the customer the stamped yellow receipt to give back to you. When the customer gives you the stamped yellow receipt you give the customer their purchase and the PINK copy of the receipt. Keep the STAMPED YELLOW copy, as verification that the item was paid for.

The Old Lahaina Courthouse closes at 5pm SHARP so make sure that your customers have time to go into the courthouse and pay for their items before 5 pm.

Fill out an Artist Invoice with the total amount of your sales and put it in the box located at the top of the stairs on the back lanai of the Old Lahaina Courthouse by 5:15 pm. The Nonprofit Organization managing the Festival will inform you of when your check will be ready for pick-up.

Remember! Under NO circumstances may money be exchanged in Lahaina Banyan Tree Park!

Lahaina Banyan Tree Park Festivals

Nonprofit Organization Festival Management Application

Date: _____

Nonprofit Legal Name: _____

DBA: _____

Mailing Address: _____

Physical Address (if different): _____

Contact: _____ Title: _____

Contact Phone: _____ Contact Cell Phone: _____

Contact Email: _____ Text OK? _____

Website Address: _____ # of Years Managing Art Festivals _____

Nonprofit Mission Statement:

What is the “demonstrated public benefit” of your 501c nonprofit organization (DLNR requirement)?

What are the “significant educational components” of your 501c3 nonprofit organization (DLNR requirement)

___ Attach copy of IRS Determination Letter (dated within 3 years)

ATTACHMENT C

___ Attach copy of State of Hawaii Certificate of Vendor Compliance (dated within 30 days)

___ Attach copy of articles of incorporation

___ Attach copy of bylaws

___ Attach corporate resolution verifying person(s) authorized to sign legal documents on behalf of the organization. This requirement is waived if this wording is included in bylaws

___ Attach list of current directors and officers, including addresses and phone numbers

___ Attach W9

___ Attach signed RELEASE AND INDEMNITY

___ I have read and will abide by the Lahaina Banyan Tree Park Festival Rules and the Nonprofit Organization Festival Management Rules. I have read and understand the enforcement procedures.

Signed

Signature of Authorized Official

Date

Print Name / Title

Date

Signature of Authorized Official

Date

Print Name/Title

Date

Mail to:

Lahaina Restoration Foundation
120 Dickenson Street
Lahaina, HI 96761

Lahaina Banyan Tree Park Festivals

Nonprofit Organization Festival Management Report

___ 1st QTR. July – Sept ___ 2nd QTR. Oct. – Dec. ___ 3rd. QTR. Jan. – March ___ 4th QTR. April – June

Fiscal Year 20___ to 20___

Nonprofit Legal Name: _____

Mailing Address: _____

Contact: _____ Title: _____

Phone: _____ Email _____

Festival Dates this quarter: _____

___ QTR. Financial Report

Gross Sales: \$ _____

- GET: \$ _____

- Shipping: \$ _____

= Net Sales: \$ _____

- Artist % \$ _____

= Net to Nonprofit Org. \$ _____

Park Festival Fees Paid \$ _____

Music /Education Fees Paid \$ _____

Total Public Benefit: _____ (Nonprofit net + Festival Fees + Music/Education Fees)

Program Activities This Quarter:

1. Entertainment: Performers and Dates

2. Educational Activities: Educators, Dates, Type of Activity

Attach 4 photos of educational activities & musicians

Attach 5 samples of published festival promotional material (free or paid is OK)

Email report & attachments to **Festival Administrator** (info@lahainarestoration.org) no later than 15 days after end of quarter.

RELEASE AND INDEMNITY

I agree to comply with the Lahaina Banyan Tree Festival Rules and Regulations, as may be amended from time to time, and all applicable laws, rules and regulations, and will conduct my business and activities at the Lahaina Banyan Tree Park Festival in a safe, efficient and reputable manner.

I hereby release the Lahaina Restoration Foundation, County of Maui, State of Hawaii, and each of their members, managers, officers, directors, employees, representatives, agents, successors and assigns (collectively, "Released Parties") from liability for property damage, bodily injury, illness or death which I may incur as a result of my presence and activities on, and participation at, the Lahaina Banyan Tree Park Festival. I hereby assume all risks connected therewith and by my signature below, I consent to this Release and Indemnity in connection with my participation at the Lahaina Banyan Tree Park Festival.

In consideration of my being permitted to participate at the Lahaina Banyan Tree Park Festival, I, for myself and on behalf of my heirs, executors, administrators, trustees, successors, assigns and anyone else who may claim on my behalf, hereby waive any and all claims, liability and damages of any kind whatsoever I may now or in the future have against the Released Parties, arising by any means whatsoever, including, but not limited to, death, injury, illness, damages to or loss to my person or property, no matter how caused, arising from or in connection with my presence and activities on, and participation at, the Lahaina Banyan Tree Park Festival.

Further, I also agree to indemnify, defend and hold harmless each of the Released Parties from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses including, but not limited to, attorneys' fees, reasonable investigative and discovery costs and court costs, which in any manner may arise or be alleged to have arisen, or resulted, or alleged to have resulted, from my presence and activities on, and participation at the Lahaina Banyan Tree Park Festival including, but not limited to, claims for bodily injury or death of persons and for loss of or damage to property.

Signature: _____

Name and Title (Printed): _____

Nonprofit Organization: _____

Date: _____