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Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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October 27, 2016

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OFFICE OF THE
COUNTY CLERK

The Honorable Mike White
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair White:

SUBJECT: **CONCESSIONS AND SPONSORSHIPS IN COUNTY
PARKS AND RECREATIONAL FACILITIES**
(PAF 15-096)

May I request the attached proposed bill, entitled "A BILL FOR AN ORDINANCE RELATING TO CONCESSIONS AND SPONSORSHIPS IN COUNTY PARKS AND RECREATIONAL FACILITIES," be placed on the next Council meeting agenda.

Respectfully,

A handwritten signature in cursive script, appearing to read "Riki Hokama".

RIKI HOKAMA
Councilmember

paf:scb:15-096f

Attachment

COUNTY COMMUNICATION NO. 16-273

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE RELATING TO CONCESSIONS AND SPONSORSHIPS IN COUNTY PARKS AND RECREATIONAL FACILITIES

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The purpose of this ordinance is to establish a policy for the Department of Parks and Recreation's awarding and administering of sponsorships and concessions, including contracts for pouring rights, advertising, vending machines, and parking and the establishment of a fund for the deposit of all funds received from concessions and sponsorships.

SECTION 2. Section 13.04A.030, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

““Concession” has the same meaning as that word is defined in section 3.40.030 of this code.

“Concessionaire” means a person having a concession agreement with the County under this article.

“Naming rights” means a type of sponsorship in which a person purchases the exclusive right to name a County park, recreational facility, program, equipment, or tangible property, not including the naming of a mere component (such as a bench in a park or a specific room in a building).

“Pouring rights” means the exclusive right of a beverage maker or distributor to have its products sold at a particular venue, event, or institution.

“Sponsorship” means the funds, products, or services provided by a person to the County in consideration of an opportunity for the entity to promote its name, product, or service in conjunction with a County program or event and includes the use for compensation of space on County property to display advertising.

“Sponsor” means a person having a sponsorship agreement with the County under this chapter.”

SECTION 3. Chapter 13.04A, Maui County Code, is amended by adding a new article to be appropriately designated and to read as follows:

“Article VIII. Concessions and Sponsorships.

13.04A.410 Policy. A. Policy. Concessions and sponsorships in County parks, facilities, and other areas controlled by the department shall be awarded and administered as provided by this article.

B. Authority. The director shall have the authority to negotiate concession and sponsorship agreements for concessions and sponsorships at or in County parks, facilities, and other areas controlled by the department.

C. Facilities. Subject to written approval by the director of finance, on or before March 1st of each year, the director shall designate parks and buildings within the County parks and recreational areas that are suitable for concession facilities and sponsorships.

13.04A.420 Concession agreements. A. Bid required. Unless expressly excepted in subsection B of this section, no concession or concession space in any building or on any land under the control of the department may be leased or rented except under public advertisement for sealed tenders in accordance with chapter 3.40 of this code.

B. Exceptions. The director may enter into agreements for concessions, including contracts for pouring rights, advertising, vending machines, and parking, in County parks and recreational facilities, on terms and conditions approved by the corporation counsel as to form and legality, without calling for public bids, for:

1. Permitted concessions. Concessions on permits issued by the department for a period not exceeding one year that are revocable on notice of 30 days or less.

2. Activities without charge. Concessions or concession spaces that are set aside without any charge for events, productions, attractions, or activities.

3. Persons with disabilities. Concessions or concession spaces that are set aside for the use of persons with disabilities.

4. Coin-operated vending machines. Concessions spaces that are leased or rented for coin-operated vending machines, except coin-operated insurance vending machines.

5. Lei vendors. Concessions that are leased or rented for lei vendors.

6. Fourteen-day period or less. Nonrenewable concessions for a period of not more than 14 days.

C. Duration. The duration of the grant of a concession or concession space shall be related to the investment required but in no event to exceed 15 years.

D. Approval. All concession agreements made pursuant to this section are subject to prior written approval by the director of finance. All concession agreements for a term of more than one year or an amount in excess of \$100,000 must be approved by the County council by resolution.

E. Parking charge prohibited. A concession authorized under this chapter may not charge for parking at a for-profit event not sponsored by the County.

F. The sale and consumption of alcoholic beverages shall be in conformity with applicable laws.

G. Reports. On or before March 1st of each year, the director shall provide to the council a detailed report on the financial activities, revenues, and status of each concession award during the prior year.

13.04A.430 Concession grants. Concession, concession spaces, or real property to be leased, rented, or set aside under this article without any charge or at a charge below fair market value shall be considered a grant of public property and shall be submitted to the council as an application for grant award and considered by the council pursuant to chapter 3.36 of this code.

13.04A.440 Sponsorship agreements. A. Content.

1. Sponsorship agreements may include:
 - a. Naming rights for a County park or recreational facility;
 - b. Advertising rights at or in a County park, recreational facility, program, or event;
 - c. Presenting a sponsor for a signature event or festival;
 - d. Appropriate mention in the media releases and promotional materials as a sponsor of a program or event;
 - e. Recognition on the program website as a sponsor;
 - f. An adopt-a-park or adopt-a-facility program; or
 - g. Other appropriate benefits as determined by the director.
2. Sponsorship agreements may not include:
 - a. Use of the County name, seal, or other insignia;
 - b. Political campaign speech;
 - c. Religious speech that advocates or opposes a religion or religious belief;
 - d. Entities that practice or promote discrimination based on race, color, creed, religion, sex, national origin, sexual

orientation, gender identity, disability, marital status, socioeconomic status, or age.

3. Sponsorship agreements shall be consistent with the image, values, and objectives of the County, as reflected in the general plan.

B. Advertising. For purposes of this section, advertising includes:

1. Sponsor signs and banners;
2. Sponsor logos on publicity materials, including programs, posters, advertisements, and tickets;
3. Acknowledgment in news releases and media;
4. Verbal announcements;
5. On-site displays;
6. Product sampling and other merchandizing;
7. Exclusivity for product or service; or
8. Hospitality, including designated parking, seating, and tickets.

C. Value. Sponsorship agreements shall be valued at an amount commensurate with the relative value to the sponsor of the benefit conferred upon it.

D. Approval. All sponsorship agreements made pursuant to this section are subject to prior approval by the corporation counsel, as to form and legality, and the director of finance. All sponsorship agreements valued at an amount in excess of \$5,000 are subject to prior approval by the council by resolution.

E. All advertising must be submitted to the director prior to approval in sufficient detail to determine content and final general appearance.

F. Reports. On or before March 1st of each year, the director shall provide to the Council a detailed report on the financial activities, revenues, and status of each sponsorship award during the prior year.

13.04A.450 Indemnity; liability. A. All concessionaires and sponsors shall be required to execute an indemnity agreement with the County providing that it shall defend, indemnify, and hold harmless the County, its officers, agents, and employees against all loss, liability, claims, demands, suits, actions, and damages arising out of the concessionaire or sponsor's use of the County property under a concession or sponsorship agreement.

B. Pursuant to administrative rules adopted under section 13.04A.240, the director shall require persons entering into a concession or sponsorship agreement under this article to secure general liability, property damage and other insurance, in amounts and kinds established by the director of finance.

13.04A.460 County parks enterprise fund. A. There is established and created a fund to be known as the “County parks enterprise fund,” into which shall be deposited all proceeds received by the department under this article.

B. All proceeds collected by the department under this article are deemed appropriated upon receipt, and may be expended for purposes relating to the implementation of this chapter, such as the provision of salaries, the purchase of equipment, and the maintenance of County property.

13.04A.470 Appeals. A. Any individual aggrieved by a decision or order of the director under this article may file an appeal with the board of variances and appeals pursuant to chapter 19.520 of this code, and the rules of practice and procedure as adopted by the board of variances and appeals.

B. Procedure. A contested case hearing shall be held on the appeal in accordance with rules of the board of variances and appeals. The department, through the director, shall be a party to the proceedings.

C. Standard of appeal. The board of variances and appeals may affirm, reverse, or modify, in whole or in part, any decision or order of the director under appeal, if the board of variances and appeals finds the decision or order is:

1. Based on a clearly erroneous finding of material fact or erroneous application of the law; arbitrary or capricious in its application, or a clearly unwarranted abuse of discretion; and
2. A reversal or modification of the decision or order will not jeopardize life, limb, or property.”

SECTION 4. Section 3.40.010, Maui County Code, is amended to read as follows:


“3.40.010 Establishment of policy. Pursuant to section 8-4.3.10, Revised Charter of the County of Maui (1983), as amended, the following is declared to be the policy of the County governing the leasing, renting, and letting of real property and the awarding of concessions of the [county] County, except as otherwise provided in [section 13.04A.140] chapter 13.04A.”

SECTION 5. Section 13.04A.140, Maui County Code, is repealed.

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 7. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JERRIE SHEPPARD
Department of the Corporation Counsel
County of Maui
2016-0655