

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING

July 19, 2017

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:01 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Kyoko Kimura
- Harris Nakamoto
- Nancy Atmospera-Walch
- Mark Ritchie

**ABSENT MEMBERS:**

- Garth Yamanaka

**STAFF:** DBEDT

Dori Palcovich

Office of the Attorney General

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### II. APPROVAL OF JUNE 28, 2017 MINUTES

Mr. Nakamoto made a motion to accept the June 28, 2017 minutes, as presented. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

### III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New Hawaii Administrative Rules (HAR) Title 4, Chapter 161, Hawaii-Grown Industrial Hemp, promulgated by Department of Agriculture (DoAg)

Vice Chair Cundiff explained that although DoAg is not attending the meeting today, representatives were at the Board meeting prior to the public hearing and reviewed the proposed rules at that time. Fourteen people attended the public hearing with four testifying, three were in favor of the rules.

The one testifier in opposition was concerned with the cross-pollination of medical marijuana. However, in researching this issue further, Vice Chair Cundiff was told by other agricultural representatives there would not be any problems with this rule and the cross-pollination of medical marijuana; as a result, the testifier's opposition would not be a valid concern for DoAg. Overall, he believes the rules would be good for small business.

Vice Chair Cundiff made a motion to approve the proposed rules for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS**

##### **A. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 157, Examination and Immunization, promulgated by Department of Health (DOH)**

Dr. Sarah Park, DOH's Chief of Disease Outbreak Control Division, introduced Branch Chief Mr. Ronald Balajadia, and explained the history of these rules since 2001 when they were last updated. The purpose of this proposal is to update the immunization and examination requirements for Hawaii schools and post-secondary schools. A comprehensive training initiative will also be implemented to ensure that affected businesses and organizations understand the requirement changes and that they are able to screen records appropriately.

The small businesses required to comply with the proposed rules are health care providers, and child care centers, as well as compulsory schools, and post-secondary schools. The proposal seeks to require additional immunizations at the child care, kindergarten, and 7<sup>th</sup> grade school entry levels. However, the amendments to the vaccination requirements are already routine and administered by health care providers.

The proposed changes were developed and reviewed in concert with the School Examination and Immunizations Requirements Working Group, which is comprised of representatives from private compulsory and post-secondary institutions, the American Academy of Pediatrics, and others.

The proposal is consistent with the national guidelines, the U.S. Centers for Disease Control and Prevention Advisory Committee on Immunization Practices and are comparable to and in some instances less stringent than other states' school and post-secondary school immunization and examination requirements.

Mr. Ritchie made a motion to send the proposed amendments to the Governor for public hearing. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

##### **B. Discussion and Action on Proposed Amendments to the "Interpretative Administrative Zoning Rules and Regulations (2014) of the Kauai Planning Commission," Relating to Chapter 8, 9, and 10 of the Kauai County Code (1987), Enforcement of KPAR 8-19, Kauai County Code, Chapter 8, Article 17, Relating to Transient Vacation Rentals of the Kauai County Code, promulgated by the County of Kauai Planning Commission**

Ms. Jodi Higuchi, Kauai County Deputy County Attorney, and Mr. Kaaina Hull, Deputy Director at the County of Kauai Planning, discussed the amendments and provided a summary and history of the rules, explaining that this proposal will bring the rules in-line with the requirements of Chapter 8, Article 17.

Specifically, the amendments will elaborate on the items that must be submitted to the Planning Department along with applications to renew non-conforming use certificates, the

deadlines for the applications, and repercussions for failing to submit an application by the annual expiration date.

The amendments increase the per-day fine amount for Class I and II type structural violations from \$250 to \$500, and non-compliance with the ordinance violations (including the posting of no non-conforming use certificates signs) from \$250 to \$1,000; all of which will be consistent with the County Code. Fines will continue to be deposited in a general account and used to offset administrative costs for enforcement activities. The most significant amendment eliminates the former grace period, where renewal applications were accepted 30 days past the deadline, a direct conflict with the County Code.

As many impacts and complaints of transient vacation rental impacts have arisen from neighbors, an increased fine for no nonconforming use certificates sign posting is a high priority to emphasize the importance of such notice to neighboring landowners that a non-conforming TVR use is legal. The sign is about a foot long, is placed on the front of a property and has a classification (license) number on it. Mr. Hull noted that there may be approximately 1,500 illegal operations on the Island of Kauai at any given time. Although it will be an arduous task, once nonconforming operations are found, a cease and desist order is given.

The major business impact will be to all those owners and business entities engaged in non-conforming transient vacation rental uses that are required to comply with the rules.

Vice Chair Cundiff made a motion for the amendments to proceed to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to Title 1, Rules of Practice and Procedure of the Kauai County Planning Commission (Codified May 2014), as follows, promulgated by the County of Kauai Planning Commission

1. Chapter 6, Agency Hearing Procedures

Mr. Hull explained that the amendments are expected to clean-up and clarify the rules for contested case proceedings. This will be done by eliminating civil style discovery, clarifying the time for filing motions and requiring resolution of motions by the presiding officer without a hearing unless the presiding officer requires otherwise. Clarification also includes specifying that no reply or supplemental memoranda will be filed unless required by the presiding officer.

Overall, the amendments are designed to avoid ambiguity and encourage an expeditious and inexpensive contested case process while providing for procedural due process at the administrative level with a focus on a more informal process rather than a full-blown procedure.

Vice Chair Cundiff made a motion to move the amendments to public hearing. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

## 2. Chapter 9, Appeals from Actions of the Planning Director

Ms. Higuchi explained that the proposed amendments are intended to clarify actions of the Planning Director appealed to the Planning Commission by eliminating reference to specific articles within the Comprehensive Zoning Ordinance. The amendments also clarify that any person, not just applicants, can petition appeal actions under the Ordinance.

In addition, the amendments are intended to clarify the deadline for filing petitions to appeal for each type of action, and are designed to further clarify the process to eliminate controversies highlighted by recent contested appeals.

Vice Chair Cundiff made a motion to move the amendments to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

### **V. ADMINISTRATIVE MATTERS**

#### A. Discussion with eGovernment Services & Customer Services Representative regarding the Development and Implementation of a New Website for the Board

Ms. Rosemary Warfield, Manager at eGovernment Services & Customer Services, and Mr. Christopher Cosner, Web Designer, from Hawaii Information Consortium (HIC), explained that HIC contracts with the State of Hawaii by creating websites and providing website services. Chair Borge stated that this Board was looking to revamp its website to be more meaningful and user-friendly to the end-users, which includes Hawaii small businesses as well as State and County Agencies.

Ms. Warfield stated that the Board's current website looks the same as other State websites; it is simply laid-out, has limited content, and is up-to-date. When creating and updating a new website, two questions are asked: 1) what are the goals of the agency; and 2) who is the audience. Based on these questions, some of the suggestions made to the Board's website would be to have a "call to action" link, another link recapping legislative matters, and links to the Board's activities and its members. Additional suggestions include reconfiguring the website's content, eliminating many of the pdf's, adding photos and videos, and accepting testimonies on-line for administrative rules being heard at upcoming Board meetings.

In response to Chair Borge's inquiry regarding HIC's current work, Ms. Warfield showed the members the State's Hoisting Machine Operators Advisory Board website. She went through the site, listing the various links (i.e., operator resources, about us, news, contact us, and list of certified operators), and noted that this website's original template was the same as this Board's.

Mr. Cosner explained that in addition to creating a new website, HIC is able to restructure the way the content is managed in order to make the site more stream-lined and easier to work with. Ms. Warfield added that she has been working with the State over ten years and never heard about this Board even though it has a lot of pertinent issues impacting Hawaii businesses.

Chair Borge stated that because this Board works with small business owners, it is important that the website is practical, simple and to the point. Vice Chair Cundiff believed that it would be beneficial to have less of a “government-type” website in order for Hawaii small businesses to become comfortable using it and more active in the regulations that affect them, rather than waiting for agencies to come to them with the proposed rules. In addition, it was suggested that the website has a more marketing approach with an ability to do “email blasts.”

The cost of developing a new website would be roughly \$15,000, with a monthly maintenance fee. The discussion ended by thanking Ms. Warfield and Mr. Cosner for their time and information, with the Board getting back to them with a timeframe.

#### B. Discussion and Action on Proposed Amendments to Chapter 201M, HRS

Chair Borge explained that under the Board’s statute, Section 201M-5 (a), it states; “For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.” However, there have been incidences in the past where the Board members have been accused of overstepping its boundaries. As such, for clarification purposes, it is important for the members to fully understand its statutory mandates regarding county ordinances. Vice Chair Cundiff stated that County agencies’ rules and regulations are created to comply with ordinances. Therefore, it would appear that as a small business advocacy board, this Board should likely have consideration in reviewing ordinances.

Vice Chair Cundiff made a motion to seek a legal opinion in writing for clarification purposes regarding the meaning of Section 201M-5 (a), Hawaii Revised Statutes. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

In regards to the Board’s rule-making process, Chair Borge made reference to a study that was forwarded to this Board about a year ago, by Mr. Tim Lyons, which was written by Mr. Denver Coon, a student, at the time the paper was written, at UH’s Richardson School of Law. The study, “Modernization of Hawaii’s Rule-Making Procedure,” reviews the existing rule-making procedures when it began in the 1950’s regarding agencies being required to go to public hearings.

Chair Borge stressed that Hawaii should be no different than other states where stakeholders are engaged early on in the rule-making process; this would be more meaningful and relevant for businesses, rather than being engaged at the end of the process. Further, he believes that this study and the recommendations made within the study should be strongly considered by this Board and brought forward to the Legislature.

Mr. Ritchie suggested that a marketing piece be created on a “how to guide” created by this Board to guide and describe reaching out to small businesses. Mr. Cundiff added that it should go beyond that and require Agencies to go out to small business stakeholders.

The continuation of this discussion is deferred until the next Board meeting.

C. Update on this Board's Newly Created Position, Office Assistant III

A temporary (89-day hire) Office Assistant is in the process of being hired, prior to hiring a permanent full-time assistant, which is to be hired at the beginning of 2018.

D. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

Deferred until next month.

- VI. NEXT MEETING** – The next meeting is scheduled for Wednesday, August 16, 2017, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.
- VII. ADJOURNMENT** – Ms. Kimura made a motion to adjourn the meeting and Vice Chair Cundiff seconded the motion; the meeting adjourned at 12:15 p.m.