

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

Jun 28, 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 p.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Kyoko Kimura
- Harris Nakamoto
- David Sikkink

ABSENT MEMBERS:

- Garth Yamanaka, 2nd Vice Chair
- Nancy Atmospera-Walch

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
None

II. **APPROVAL OF MAY 17, 2017 MINUTES**

Ms. Kimura made a motion to accept the May 17, 2017 minutes, as presented. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on proposed Amendments to Title 8, Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, promulgated by the Department of Liquor Control, County of Maui

Ms. Kimura explained that the amendments have already gone through public hearing and were adopted; however since then, there have been a lot of complaints by the community and even a lawsuit regarding some of the amendments. One major concern relates to the 24-hour sales of retail licensees.

Another concern requires every board member to disclose all fines, \$25.00 or more, since he or she was eighteen years old. Ms. Kimura noted that many of the non-profit board members are over 70 years old and the fines would involve library fines, parking tickets, etc. Furthermore, if board members inadvertently forget to identify all the fines, it would be considered a falsification and they would be subject to having his or her membership revoked.

Chair Borge stated that he encourages the Maui Liquor Commission to thoroughly vet the stakeholders' concerns, especially those involving the submission of past fines of non-profit board members.

Ms. Kimura made a motion to proceed to public hearing in order to thoroughly address and vet the concerned issues brought forth by the small business stakeholders and the community, and to suggest changing some of the rules that were previously approved, particularly the requirement of non-profit board members disclosing information of past fines. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to Title 3, Rules of the Liquor Commission, City and County of Honolulu, State of Hawaii, promulgated by the City and County of Honolulu Liquor Commission

1. Chapter 81, Liquor Commissions, Section 17.51, License Fees
2. Chapter 81, Section 17.58, Trade Name; Change; Fee
3. Chapter 82, Licenses and Permits, General Provisions, Section 33.11, Applications for Individual Permits to Receive Shipments of Liquor
4. Chapter 82, Section 33.6, Direct Shipment of Wine by Wineries
5. Chapter 83, Procedure for Obtaining License, Section 54.1, Filing Fees

Assistant Administrator, Ms. Anna Hirai, introduced Mr. Don Pacarro, Administrator, from the City and County of Honolulu Liquor Commission, and explained that the proposed rules represent the second of three major rule projects before this Board; the third project is expected to come in front of this Board sometime in 2018.

The current amendments focus on proposed increased license fees, which has not occurred in several years. Extensive time to outreach was given to the stakeholders in order for the purpose of the increase to be fully understood and to solicit questions. On May 12th and the 26th, meetings were held with much time explaining the significance of how the Liquor Commission is completely self-supporting with no financial assistance from the State's general fund, and that by law, it is unable to accumulate funds over successive years on large, extraordinary purchases.

The Liquor Commission also discussed with the stakeholders the "fiscal picture" from 2005 (the last time license fees were increased) to date, reporting that fiscal year 2017 revenues are expected to be at one of the lowest levels since 2011. Every class of represented licensee, currently regulated, was invited to the meetings.

Ms. Hirai explained that another main reason for the fee increase is due to the construction and implementation of the new custom-built computer system. At the stakeholder meetings, several questions and suggestions were made, of which, the Commission were open to. Ms. Hirai would like to go to public hearing within mid- to late-July for further vetting and feedback of the stakeholders.

It was explained that the licensees are subject to two different fees, the basic license fee that everyone is required to pay when licenses are renewed and an additional license fee that depends on what the businesses' reported gross liquor sales are; it is believed that paying this type of license is more equitable than the current process. Also noted was that the Commission is only allowed to keep twenty-percent (20%) of the monies collected.

Chair Borge stated that the proposed fee increase is quite hefty, so this Board is appreciative of the Commission bringing the stakeholders into discussions before the formal public hearing. Ms. Hirai fully believes that Honolulu's Liquor Commission will have one of the most accurate data systems in liquor regulation as a vast number of licensees will now be able to administer their own input that allows for checking the accuracy of the on-line data.

Ms. Kimura made a motion that the proposed rule amendments proceed to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules to Title 11, Chapter 55, Water Pollution Control, promulgated by Department of Health (DOH)

Mr. Alec Wong, Chief of DOH's Clean Water Branch, stated that he is looking to this Board for approval for the proposed rule amendments to go to public hearing, and explained that under these rules are the requirements of water pollution permits, which are part of the Federal Clean Water Act National Pollutant Discharge Elimination System (NPDES). The NPDES is a permit system that authorizes certain types of point source discharges, as well as some storm water discharges, to surface water such as streams, lakes and oceans.

The proposed rule revisions are meant to streamline the permitting process and include, among other requirements, updating the renewal terms and effective dates of the general permit, deleting the prohibition preventing General Permit coverages for discharges to Class AA (marine) and Class 1 (inland) State waters, and adding requirements for electronic reporting per federal regulations. Mr. Wong noted that the general filing fee for small businesses is reasonable at \$500 and the renewal filing fee is \$1,000; all fees are able to be renewed on-line, which is a benefit to businesses.

Discussion leader, Mr. Nakamoto, stated that DOH's streamlining process of the rules is to be commended, and that DOH is very pro-active with its updates by addressing potential issues "now" rather than "later" as it relates to Hawaii's water quality.

Mr. Nakamoto made a motion to support the proposed amendments and move them to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 231, Administration of Taxes, as follows, promulgated by Department of Taxation (DoTax)

Mr. Jacob Herlitz, DoTax Administrative Rules Specialist, and Supervisor, Ms. Kristen Sakamoto, discussed the following proposed rule amendments.

1. Amendments to Section 3-14.17, Revocation of Licenses because of Abandonment

Mr. Herlitz explained that in order to do business in the State of Hawaii, one must receive a general excise tax license. Once a license is received, one must then periodically file a return, even if no revenue is generated. When a company goes out of business, it is allowed to cancel its license and it will no longer be required to file a general excise tax return.

However, a lot of companies that go out of business simply abandon their licenses. This has resulted in over a span of decades DoTax keeping a tremendous amount of backlogged abandoned licenses in its database. As DoTax is updating its records into a new computer system, it is imprudent to transfer hundreds of thousands of abandoned licenses into the new system.

Therefore, in order to remove the old, abandoned licenses, DoTax will be publishing on its website that licensees will have 45 days to notify DoTax that their licenses are no longer required. DoTax will then revoke the licenses and get a fresh start with the current, existing licenses. However, even if down the road, a license is removed from the new system, it can still be recaptured from the old system if the business still exists.

Chair Borge asked if DoTax's system to file on-line was revamped to be more "user friendly." In response, it is Mr. Herlitz's understanding that the people working on the new system are ironing out the glitches.

Testifier, Mr. Reg Baker, recommended that Hawaii attorneys be notified of DoTax's new abandonment policy. This is because attorneys create "shelf corporations" in order to receive GET licenses when taxes are filed resulting in a lot of abandoned licenses for "shelf corporations" that need to be removed from the system. Ms. Kimura recommended that management companies be notified of the new abandonment process, and Mr. Sikkink suggested that a general notice be provided in a local publication.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Mr. Sikkink seconded the motion, and the Board members unanimously agreed.

2. Proposed New Section 3-14.26, Registration of Representatives

Mr. Herlitz explained that this proposed new rule gives DoTax the authority to require a person who represents a taxpayer to register with DoTax; the representatives may be CPA's, attorneys, or anyone who would otherwise be allowed to register. No fee is involved in registering; it simply allows the registered person to access and have authorization to the taxpayer's information.

Mr. Nakamoto made a motion to move the proposed new rule to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

3. Amendments to Section 9.9-03, Taxpayers Subject to EFT Program

Mr. Herlitz explained that the proposed amendments to the electronic funds transfer program allows DoTax the authority to enroll taxpayers/small businesses with taxable income of \$100,000 or more a year into the EFT program, which then allows them to pay their taxes electronically.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on HAR Title 18, Chapter 237, General Excise Tax Law, as follows, promulgated by DoTax

1. Amendments to Section 8.6, County Surcharge

Ms. Sakamoto explained that when a business pays excise tax, they are required to report on its tax return the method as to where the gross income and gross proceeds go to each county. The proposed amendments will simplify the allocation method by eliminating the “nexus” analysis, which is currently an extra step. In addition, the amendments will automatically determine allocation of gross income and gross proceeds from services.

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

2. Proposed New Section 29.53, Exported Services

Ms. Sakamoto explained that because there are currently no rules within DoTax for exported services, this proposal provides for thirteen new sections which will clarify how to determine whether gross income, derived from services or contracting, is exempt from the general excise tax as exported services or contracting. Overall, this new section is expected to guide the taxpayer in filing exported services correctly, as there is no guidance right now from DoTax.

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

V. ADMINISTRATIVE MATTERS

A. Discussion and Action on this Board’s Nominations of Proposed Board Members for Submission to the Governor, including Larry Anderson, Reg Baker, Pamela Tumpap, David S. Chang

Chair Borge made a motion to submit the following names to the Governor for nominations of proposed members to this Board from Oahu: Messrs. Larry Anderson, Reg Baker, and David S. Chang; and from Kauai, Mr. Mark Perriello. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

Staff will contact Ms. Pamela Tumpap, from Maui, to find out if she is still interested in becoming a member, and if so, to request that she register on-line with the Governor's boards and commissions website.

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

Deferred until the next board meeting.

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

Chair Borge stated that a table-top retractable sign with the Board's logo and mission statement is in the process of being created to be used for upcoming trade shows.

It was announced that Chair Borge and Ms. Kimura were on Reg Baker's ThinkTech Hawaii stream-lined show, which is the second time this Board was asked to partake in the show. The show was aired on Thursday, June 8th and is currently on youtube.

VI. NEXT MEETING – The next meeting is scheduled for Wednesday, July 19, 2017, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Chair Borge made a motion to adjourn the meeting and Mr. Nakamoto seconded the motion; the meeting adjourned at 11:54 a.m.