

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

May 16, 2018

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Garth Yamanaka, 2nd Vice Chair
- Kyoko Kimura
- Reg Baker
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Robert Cundiff, Vice Chair
- Harris Nakamoto
- Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Dawn Apuna

II. APPROVAL OF APRIL 18, 2018 MINUTES

Mr. Baker made a motion to accept the April 18, 2018 minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. NEW BUSINESS

- A. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 66, Pesticides, promulgated by Department of Agriculture (DoAg)

Ms. Victoria Matsumura, Environmental Health Specialist at DoAg, stated that of the chapter's 56 proposed rule changes, 8 were identified as having small business impact. Of the 8 changes, the most significant change was a new, one-time licensing fee for pesticide devises.

Fee increases apply to permits, examinations, educational services, and certifications. The department head currently has the authority to waive or reduce the fees for businesses that have financial hardship; in the past, this authority was delegated to the branch manager. While a repeal process is not included in the rules, it was explained there have never been any instances where a repeal was required.

Testifier, Mr. Tim Lyons, Executive Director of the Hawaii Pest Control Association, which represents 95% of the State's total licensed pest control companies, complimented DoAg for an admirable job in formulating the proposed rule changes; however, the Association has one concern. Under Section 4-66-60(c) (1) (3), HRS, it requires that submission of a speaker's biography and break-out presentation for continuing education purposes be made in 30 days.

Mr. Lyons stated that 10 days would be a more manageable period of time; the rules also do not allow for leeway in the time when submitting the required speaker information if a change is needed from the original speaker to a new speaker within that 30-day period. The Board of Agriculture was approached with this proposal, but to no avail.

Chair Borge applauded DoAg's willingness to work with the stakeholders during the rule promulgation period. He agreed with Mr. Lyons that the 30-day submission for a speaker's information is quite lengthy.

Mr. Ritchie made a motion to encourage dialogue between the agency and stakeholders prior to going to public hearing regarding the timeframe under Section 4-66-60(c)(a)(3) that will be mutually acceptable to all. Ms. Kimura seconded the motion, and board members unanimously agreed.

IV. OLD BUSINESS

B. Discussion and Action on Proposed Amendments to HAR Title 19 Chapter 20.1, Commercial Services at Public Airports, promulgated by Department of Transportation (DOT)

Discussion leader, Ms. Kimura, reminded the members that a memorandum was sent to DOT after last month's board meeting with several questions to be addressed. Mr. Ross Higashi, Deputy Director for DOT Airports Division thanked the members and introduced Ms. Rosemary Neilson-Nenezich, DOT's Operations Manager and Mr. John Price, deputy attorney general. He explained that a consultation meeting was held on May 11th where ten stakeholders, who attended this board's meeting last month, were present.

Mr. Higashi was following up on last month's meeting due to this Board deferring any action pending conferring with the stakeholders and answering the Board's questions raised at the last meeting to establish a level playing field for all companies that provide transportation services at the airport in order to eliminate double standards in the permitting process and discuss consistency with trade dress logos and insurance coverage requirements.

Further, in consideration of the concerns raised at the last meeting and from the stakeholder consultation meeting, DOT has decided to redraft the rule amendments and cancel the public hearings scheduled for the end of May in order for DOT to clarify the concerns in a fair manner. The new proposal is expected to be completed by mid- to late-June; Chair Borge appreciated DOT responding back to this Board.

Testifier, Mr. Noel Trainor, retired general manager at Hilton Hawaiian Village, expressed the importance of this Board, discussed his professional background, and commented on Hawaii's tourism, Hawaii's taxi service industry and the need for effective rules.

Testifier, Mr. Robert DeLuz, owner of Robert's Taxi, attended the DOT stakeholder's meeting but expressed concerns as to whether extending the rule changes would automatically extend the pilot program that will allow for an extended period of time for TNC's (transportation network companies) to provide service at the airports. He suggested that if a fair playing field is not met, that the pilot program should cease until it is. In response, Mr. Higashi expressed that his team is doing its best, and working as fast as it can to meet an August 31, 2018 deadline while carrying out the State's internal and legal processes.

Mr. Boyd Sakai, Deputy Chief with the Attorney General's Investigative Division stated that as a friendly reminder the State wants to treat the grounds transportation service industry fairly. However, there have been reports in the past where people have not been following the existing rules, and he reminded everyone that the designated pick-up areas for Uber and Lyft drivers will be enforced if they are violated.

Testifier, Ms. Dale Evans, President and CEO of Charlie's Taxi, distributed her written testimony, describing concern with the administrative rules that "allows the arbitrary change of rules at will by DOT director." She noted that there is a disparity in requirements with the proposed rules and existing Chapter 19-38.1, On-Demand Taxi Service at Public Airports;" this is because the taxi drivers have to follow these rules and the TNC's do not. Further, she explained that, as a small business owner, she will insist that DOT rule requirements include the Uber and Lyft businesses.

Testifier, Ms. Lisa Gonzales, TNC driver for Uber, drives her own car three days a week; on the days that she does not work, she does not believe she should be permitted to keep a permit decal on her vehicle and that the trade dress from Uber is sufficient.

Testifier, Mr. David Chun, attended DOT's stakeholder consultation meeting. He noted that instead of discussing this Board's five areas of concern, DOT discussed the following: 1) how the rule changes increase permittee's operating costs; 2) how the rule changes restrict permittee's operations, and 3) suggestions for another rule change that achieves the same policy objective. Going forward, Mr. Chun would like to have the five areas of concern posed by this Board be considered in a serious manner, and while he appreciated DOT's gesture for setting up the consultation meeting, he believes the attendees received little, if no, feedback.

Testifier, Ms. Lynda Kernaghan, TNC driver for Lyft and Uber, expressed that although the TNC drivers are "small businesses," the drivers are never asked to attend any of the stakeholder meetings; as such, TNC drivers' point of view is not heard. Chair Borge responded that as a small business, TNC's concerns should be heard and addressed.

Ms. Tabatha Chow, Senior Operations Manager for Uber in Hawaii, stated that she supports changes to the rules and is looking forward to continuing to focus on the policy and work with DOT's Airports Division which has worked very hard at hearing concerns and communication from the stakeholders as to how the rules should be written.

In response to Mr. Baker's inquiry as to how meetings with DOT are transmitted to Uber drivers, Ms. Chow explained that Uber officials have been present at the DOT/stakeholder meetings but the drivers had not been involved; however, Uber management has engaged the drivers in communications on policy, distributed surveys, etc. Mr. Andrew Meana, Senior Manager for Uber in Hawaii, confirmed that Uber drivers were provided with notice of on-going meetings at DOT. Testifier, Mr. Michael Johnson, TNC driver for Lyft and Uber, stated that receipt of information is slowly improving as drivers have been included in policy changes.

Testifier, Mr. Arthur Hughes owner of Island Limo, one of Uber's first partners, expressed concern with the requirement differences in the existing rules versus the pilot program requirements for TNC's. Another testifier, Mr. Timothy, TNC driver for Lyft and Uber, offered to work together with the TNC's, the taxi drivers and DOT to help resolve the differences.

Testifier, Mr. Brenten Yamane, owner of Kanoa Transportation, and a commercial operator with Uber, explained the difference between commercial partners and Umbers, and noted that there is currently not an equal playing field with all the commercial drivers at the airport. He does not believe that Uber is doing anything to help his type of commercial business.

Testifier, Mr. Rodney Sato, Managing Member of Shangri-La Company, LLC, and a former state deputy attorney general explained that, in the past, ground transportation companies were not treated fair at the airports. He attended DOT's stakeholder meeting and believes it was "a waste of his time" because DOT did not address this Board's concerns.

Chair Borge stated that based on the discussions today, there appears to be sufficient information for DOT to address this Board's concerns outlined in its memorandum to arrive at valid solutions. He has faith in DOT to address all the concerns and points brought up at the recent meetings and he looks forward to reviewing the redrafted rules. He added that this Board is willing to convene a meeting prior to the scheduled June 20th board meeting, if needed, to move forward with the public hearings. He announced that upcoming agendas and past and current minutes can be found on the Board's website.

V. ADMINISTRATIVE MATTERS

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

DBEDT staff stated that the Small Business Conference held in Maui was excellent, as it was last year, and reminded the members that DBEDT staff met the newest board member, Ms. Albitz, at last year's meeting. The speakers were dynamic and brochures were distributed to attendees at the event.

Chair Borge requested that DBEDT staff draft a press release announcing the newest members to this Board. He will be meeting with DBEDT Director Luis Salaveria this afternoon to request funds for the Board's proposed website.

B. Voting and Action on Board Chair, pursuant to Section 201M-5(c), HRS, and Voting and Action on Vice Chair and Second Vice Chair

Mr. Lydgate made a motion to vote for a continuation of one year for the existing three officers, Mr. Anthony Borge as Chair, Mr. Robert Cundiff as Vice Chair, and Mr. Garth Yamanaka as Second Vice Chair. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

It was announced that Ms. Kimura will be leaving this Board, effective June 30, 2018, as she will serve as a board member of Hawaii Tourism Authority; best wishes to Ms. Kimura.

VI. NEXT MEETING – The next meeting is scheduled for Wednesday, June 20, 2018, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Mr. Baker made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:52 a.m.