

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

November 18, 2015

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 1:01 p.m. with a quorum present.

MEMBERS PRESENT:

- Anthony Borge
- Barbara Bennett
- Nancy Atmospera-Walch
- Robert Cundiff
- Phillip Kasper
- Garth Yamanaka
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto
- Kyoko Kimura

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF OCTOBER 21, 2015 MINUTES

Mr. Ritchie made a motion to accept the October 21, 2015 minutes, as presented. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Discussion and Action on Proposed Amendments and Small Business Statement After Public Hearing to Title 3, Subtitle 6, Chapter 80, General Provisions, Section 1.1, Definitions, for Dancing, promulgated by City and County of Honolulu, Honolulu Liquor Commission

Ms. Anna Hirai, Assistant Administrator at the Honolulu Liquor Commission, stated that two individuals attended the public hearing with most of their discussion on first amendment issues and the enforcement of the proposed amendment. She also stated that the Liquor Commission is concerned with the public safety aspect of the dancing rule, so that people are not blocking others while dancing in the isles; Chair Borge noted that the definition of dancing was a good definition.

Mr. Ritchie made a motion to move the proposed amendments to the Mayor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments and Small Business Statement After Public hearing to Title 08, Subtitle 01, Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, Subchapter 1, General Provisions, Section 5, Definitions, for new definition of Dancing, promulgated by County of Maui – Department of Liquor Control

Chair Borge explained that during the public hearing, two people attended and ten people submitted written comments; he added that there is no substantial impact on small business. Ms. Traci Villarosa, Deputy Attorney for Maui's Department of Liquor Control, explained that most of the comments at the public hearing were general in nature regarding the freedom of dance and the positive aspect of dancing.

Mr. Cundiff made a motion to move the proposed amendments to the Mayor for adoption; Mr. Yamanaka seconded the motion. Ms. Kasper recused himself due to a potential financial conflict of interest; all remaining Board members agreed.

C. Discussion and Action on Proposed Amendments and Small Business Statement After Public Hearing to Rules & Regulations 1.1, Definitions for new definition of Dancing, promulgated by County of Kauai Department of Liquor Control

Chair Borge noted that Kauai's proposed definition of dancing is the same as Maui's definition.

Second Vice Chair Bennett made a motion to move the proposed amendments to the Mayor for adoption. Ms. Atmospera-Walch seconded the motion and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments and Small Business Statement After Public Hearing to HAR Title 13, Chapter 256, Ocean Recreation Management Rules and Areas, Section 152, Kahaluu Bay, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader, Mr. Ritchie, explained that the rule changes only affect commercial surf instructors and will allow for surf school permits. Eighteen people submitted comments at the public hearing and six people testified; it was noted that the Land Board previously approved the proposed amendments.

Mr. Edward Underwood, Administrator for the Division of Boating and Ocean Recreation at DLNR, explained that the proposed permits were initiated by the County to solicit four vendors to operate at Kahaluu Bay. DLNR will, in turn, issue the permits to the four vendors selected by the County; he added that this is a brand new process which resembles the permitting process at Hanalei Bay.

During the public hearing, one individual requested that "more" activity be conducted in the Bay, such as bringing in an outrigger canoe; however, because the area is small and very congested, DLNR was opposed to it. Mr. Underwood stated that, overall, there was not a lot of negative comments made at the public hearing as most of the businesses were already involved in the process and all of them have an equal opportunity to obtain any of the four

permits. He also stated that it is very difficult to ascertain how many businesses are operating in the Kahaluu Bay area. In regards to the area's map, although surfing and swimming are separated by a "pyramid rock," DLNR will consider separating the water with the installation of other markers, such as buoys, in the future.

Mr. Cundiff made a motion to support the proposed amendments to proceed to the Governor for adoption. Ms. Atmospera-Walch seconded the motion and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

A. Discussion and Action on Suggested Amendments to the "Small Business Impact Statement," Section 201M-2, HRS

Chair Borge indicated that this Board is always looking to improve upon the impact statements that the agencies are required to complete when submitting new and proposed amendments to the administrative rules. As this Board has seen significant increases in proposed fees by some of the agencies, he stated that if the increase is significantly higher than the consumer price index, the agency should provide justification.

Mr. Ritchie noted that the fees are user fees paid by the affected businesses as opposed to being paid out of the general funds. Mr. Kasper speculated that the reason small businesses do not testify against fee increases is because he or she would be the one opponent who is against the regulator, which is not necessarily good business. Mr. Cundiff suggested that the pre-public hearing statement include, "if the percent increase is greater than the CPI (Consumer Price Index) over a specific period from the last increase, additional information must be provided to support the difference and justify an increase greater than the CPI." He noted that when a small business' cost goes up, (twenty percent, for example), that twenty percent cannot be passed onto customers; as such, a small business has to look at other ways to reduce its cost. Mr. Kasper also suggested that the impact statement include the steps the agencies are taking to mitigate their costs, and whether or not it is urgent that the fees occur now.

Ms. Atmospera-Walch stated that over the years, home-based care homes never had to pay fees; but currently the department of health has recommended that care homes should be required to pay a \$3,500 fee. Mr. Kasper indicated that this is a good example in regards to the proposed changes to the impact statement; thus, if the agency is proposing a new fee, sufficient justification for it must be fully explained. Chair Borge asked DBEDT staff to amend the pre-public impact statement with the discussed proposed changes, circulate it to the members, and then place it on next month's agenda; the post-public hearing statement will also be amended and circulated.

Ms. Atmospera-Walch also noted that there is a small business problem in regards to nursing homes/home care facilities, as the federal department of labor is apparently changing "independent contractors" of care home facilities into "employees." Many of the owners of these facilities work out of their homes, and cannot understand how and why they are required to be categorized as employees; some of the owners are seriously considering closing their facilities. She further explained that home care facilities are where patients go

into private homes for assistance and care home refers to one opening their home to patients and doing business in one's home. It was suggested that the Hawaii State Department of Labor be contacted to determine if it may be promulgating similar rules; DBEDT staff will research this and get back to Ms. Atmospera-Walch.

B. Update on the Board's Budget Proposal for Fiscal Year 2017

Chair Borge stated that this Board's budget proposal was approved by DBEDT; the next step is the review and approval from Department of Budget and Finance. DBEDT numerically rated the budget request an 11 out of 36, in terms of priority.

Chair Borge and DBEDT's Director had a good conversation recently; the Director continues to express support of this Board and believes in what this Board does. The director does not want to see this Board transferred to DCCA "under his watch." Ms. Palcovich stated that during a recent Hawaii Chamber of Commerce small business and entrepreneurship advocacy meeting, the Chamber expressed support of this Board's budgetary efforts during the upcoming legislative session.

C. Update on the Board's On-Going Outreach Efforts, in accordance with Chapter 201M, HRS, including update of Board Member Meetings with State Department Directors

Chair Borge believes it is good strategy for the members to make an effort to meet with the State department directors; he noted that Mr. Ritchie recently had a productive meeting with DLNR Director Suzanne Case.

D. Discussion and Update on the Board's Proposed Monthly e-Newsletter

The Board members reviewed the proposed monthly e-Newsletter with several suggestions made to improve it. Members will provide DBEDT staff with additional names and email addresses of business organizations. Mr. Cundiff stated that this Board should convey in the e-Newsletter to the small business community that they need to tell this Board how it can help them; Mr. Yamanaka added that it should state that it is an opportunity to testify on the proposed rules and rule amendments. The e-Newsletter will be a six-month testing program.

Members' suggestions include removing the chair's picture, amending the chair's message, changing the order of the board members and the counties he or she represent, adding a link to the Board's Agenda, replacing the "reviewed" rules with "upcoming" rules the Board will be reviewing, changing the "We need your Help" paragraph with "We would like your Feedback on Rules," and doing a survey after three months. It was also suggested that all directors of the State departments that this Board works with be added to the e-mail list.

V. **NEXT MEETING** – The next meeting is scheduled for Wednesday, December 9, 2015, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.

VI. **ADJOURNMENT** – Second Vice Chair Bennett made a motion to adjourn the meeting and Ms. Atmospera-Walch seconded the motion; the meeting adjourned at 2:40 p.m.