

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

October 18, 2017

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 p.m., with a quorum present. Mr. Reg Baker, the Board's newest interim board member was welcomed.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Kyoko Kimura
- Harris Nakamoto
- Reg Baker
- Mark Ritchie

ABSENT MEMBERS:

- Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Jennifer Waihee-Polk

II. **APPROVAL OF SEPTEMBER 20, 2017 MINUTES**

Mr. Nakamoto made a motion to accept the September 20, 2017 minutes, as presented. Vice Chair 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 Amendments to HAR Title 3, Rules of Liquor Commission, City and County of Honolulu, State of Hawaii, promulgated by the City and County of Honolulu Liquor Commission, as follows:

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

Mr. Don Pacarro, Commissioner at the City and County of Honolulu Liquor Commission, explained it was determined that the cost of the new custom-built computer system, which

was one of the main reasons for the proposed fee increases, is \$950,000 rather than the expected cost of \$450,000. However, the Commission decided that it would not raise the license fees for 2018 and instead will raise the fees in 2019 by 50%. Therefore, additional increases will be spread up to 2020; approximately \$200,000, or less, will be due for the expense of the computer system.

Overall, Mr. Pacarro believes that the proposed changes are positive for small business despite some opposition during the public hearing. Many understood the purpose of the increase; ultimately, the licensees will be provided with better service and more efficiency with the new computer system. If over time, more money is collected from fees than expected, the fees will be reduced in order to be fair and equitable. During the public hearings, the restaurant association objected to the proposed fee increases but the bar associations supported the rules as presented.

Approximately \$175,000 in fines were collected over the past few years. Due to the Commission reaching out and being proactive with its “regulation for education” advocacy program by educating the license owners, more owners are aware of the rules, and as a result, less penalties are collected. This past year less than \$70,000 was collected. It was noted that collecting and using fines as a basis to raise money is against the law; further, 20% of the fines collected must be used for education.

Chair Borge stated that over the past several years, the Liquor Commission has been very proactive and progressive in engaging the stakeholders, despite receiving some dissension from small business. Mr. Pacarro thanked Mr. Baker for his assistance with the Hawaii liquor commissions on the recent tax clearance issue that was brought in front of the Federal Small Business Fairness Board.

Ms. Kimura made a motion to recommend that the proposed amendments be forwarded to the City Council and the Mayor for adoption; also recommended was that the Honolulu Liquor Commission review the projected cost of the new computer system in order to minimize and lower the projected license fees as soon as it may be deemed necessary. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Title 13, Subtitle 11, Ocean Recreation and Coastal Areas, promulgated by Department of Land and Natural Resources (DLNR), as follows:

- a. Part I – Small Boat Harbors and Other Boating Facilities
 - 1. Chapter 230, General Provisions
 - 2. Chapter 231, Operations of Boats, Small Boat Harbors, and Permits
 - 3. Chapter 232, Sanitation and Fire Safety
 - 4. Chapter 233, Motor Vehicle and Parking Rules
 - 5. Chapter 235, Offshore Mooring Rules and Areas

- b. Part II – Boating
 - 1. Chapter 240, General Provisions
 - 2. Chapter 242, Accidents, Reports, Fines, Enforcement and Records
 - 3. Chapter 243, Vessel Equipment Requirements

4. Chapter 244, Rules of the Road; Local and Special Rules
5. Chapter 245, Waterway Marking Systems

c. Part III – Ocean Waters, Navigable Streams & Beaches

1. Chapter 250, General Provisions
2. Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches
3. Chapter 253, Registration and Permit Fees
4. Chapter 254, Local Ocean Waters
5. Chapter 255, Waikiki Beach
6. Chapter 256, Ocean Recreation Management Rules

Mr. Ed Underwood, Administrator at DLNR's Division of Boating and Ocean Recreation (DOBOR) and Mr. Todd Tashima, DOBOR Legal Fellow, explained that approximately 98% of the testimonies received revolved around amendments relating to the feral and abandoned animals, mainly cats. Most of these testimonies came from individuals and humane societies, not from small business. Other testimonies related to restrictions on anchoring and mooring outside designated offshore mooring areas, dive flag requirements, and kiteboarding in Kailua Bay ocean waters.

At the Board of Land and Natural Resources meeting, the proposed rules were approved with the exception of the dive flag proposal. At this time, dive flags will only be required to be illuminated at night, with other changes to be made later. Also, the rule section requiring the relocation of feral animals from the harbors has been delayed until 2019 to give DOBOR enough time to work with the caregiver groups to relocate the animals. Mr. Underwood noted that although there is currently a big campaign against the rule section on the feral animals, DOBOR is hoping that Governor Ige will still sign off on the proposed rules. Chair Borge added that based on a business perspective, feral animals living in the harbors become a health and safety concern to commerce such as the seafood industry as well as the wildlife living in and near the oceans.

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

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Title 15, Chapter 218, Kakaako Reserved & Workforce Housing Rules, promulgated by Hawaii Community Development Authority (HCDA) / Department of Business, Economic Development and Tourism (DBEDT)

Mr. Deepak Neupane, Director of Planning & Development at HCDA, explained that he was in front of this Board a year ago before the public hearings; any impact on small business applies mostly to developers. Among other reasons, the rule changes are expected to be positive because they preserve affordable for-sale and rental units produced under HCDA's mandatory Reserved Housing and Voluntary Workforce Housing programs.

The proposal is also expected to relax off-street parking, reduce sale prices from a fixed 140 percent of adjusted median income to 120 percent on average, and allow for a cash-in-lieu of payment as an alternative. Because this program has been in existence for 30 years the developers are familiar with the rules and regulations.

Mr. Ritchie made a motion to move the proposal to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 231, Administration of Taxes, Section 25.5-02(f), Cost Recovery Fees for Collection Actions, promulgated by Department of Taxation (DoTax)

Mr. Jacob Herlitz, DoTax Rules Specialist, explained that these changes will allow DoTax to collect a cost recovery fee for any delinquent accounts or any accounts with negative balances; this applies to all taxes, not just general excise taxes. The fee is currently \$50.00; the proposal raises the fee to \$75.00 but if paid by electronic means it is lowered to \$25.00. Not only have the fees not been increased since the 1990's, but the changes reflect an effort to encourage more electronic fee filing.

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

B. Discussion and Action on Proposed New HAR Title 18, Chapter 237, General Excise Tax Law, Section 34-13, Persons with a Material Interest in a Tax Return, promulgated by DoTax

Mr. Herlitz explained that the proposed changes add a new section to the rules by defining the definition of a person with a material interest in a return. This would include a return that is related to various income splitting revisions in the general excise tax. The changes will apply to contractors and subcontractors as well as to tourism-related services. The provision is essentially a formalization of DoTax's interpretation of the law so that DoTax will be able to examine the returns of both contractors and the related taxes of the subcontractors as DoTax is currently unable to do this.

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

C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 237D, Transient Accommodations Tax, Section 4-01, Certificate of Registration, and Section 4-02, Display of the Registration Certificate, Repeal of Sections 4-03 through 4-07, and Proposed New Sections 4-08 to 4-35, promulgated by DoTax

Mr. Herlitz explained that the proposed amendments require and enforce an operator of a transient accommodation to designate an on-island local contact and display the contact's name, phone number and email address inside the unit. This information must be provided either in online advertisements or upon a guest's check-in.

The amendments will also require that a unit's transient accommodations tax license number be displayed both inside the accommodation and in all online advertisements, either directly in the advertisement or by a link. Mr. Herlitz was unsure as to how many of the transient accommodations were considered to be small business. DoTax is most interested in the on-line requirement of the enforcement because it is insufficiently staffed to go door-to-door to check if the operators are following the law.

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

D. Discussion and Action on Proposed New HAR Title 12, Chapter 44.1, Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protects Systems, and Fire Alarm Systems, promulgated by Hawaii State Fire Council / Department of Labor and Industrial Relations (DLIR)

Messrs. Ed Suzuki and Lloyd Rogers, Administrative Specialists from the Hawaii State Fire Council at DLIR, explained that the proposed new rules formalize a statewide certification process. This has been a work-in-progress over the past three years and benefits individuals who perform maintenance and testing of portable fire extinguishers, fire protection systems, and fire alarm systems.

The statewide program will be administered by the County fire departments and include the maintenance and testing of fire alarm systems and private fire hydrants, portable fire extinguishers, water-based fire extinguishing systems, and other fire extinguishing systems formally classified as non-water based fire extinguishing systems. These systems are considered life-saving, and once installed they must be maintained. The people using these systems are primarily firefighters who need to have assurance that the systems operate as they were intended. It is, therefore, very important that these individuals have the technical expertise required to maintain the systems.

It was acknowledged that training will be individualized as it can be done at home and not "on-sight;" however, a County of Kauai representative, for example, will be required to come into Oahu to take the certification test. Currently, the Fire Council has been assisting with the many questions and concerns of the vendors. It was Mr. Suzuki's understanding that neighbor island small businesses, including Kauai, were following the Honolulu model in regards to fire extinguishing systems. The cost for a license will continue to be \$100.00 for three years; however, instead of Honolulu collecting the fee, each county will collect its own fee.

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

V. ADMINISTRATIVE MATTERS

A. Discussion and Action on Creating an Informal Investigative Task Force for the Purpose of Developing and Redesigning the Board's Website, to include Goals, Content, and Features, in accordance with Section 92-2.5(b), Hawaii Revised Statutes (HRS)

Chair Borge explained that two budget proposals were submitted by this Board, \$18,000 for website development and \$20,000 for operating expenses. He reminded the members that in past meetings there was strong interest in redesigning this Board's existing website by HIC (Hawaii Information Consortium), a quasi-government entity, in order to make it easier and more inviting for small business owners to use and navigate the website.

Ms. Kimura made a motion for the Board to create an informal investigative committee consisting of Messrs. Cundiff and Ritchie to assist in crafting the development and redesign of the Board's existing website. Mr. Yamanaka seconded the motion, and the Board members unanimously agreed. DBEDT staff will also assist in the committee and the Board's deputy attorney general will advise when needed.

Mr. Baker offered to announce in his weekly live-streamed show, "Business in Hawaii with Reg Baker," rules to be reviewed by this Board at upcoming board meetings. The purpose will be to get the word out and engage small businesses to become more proactive and offer a voice in the rules that affect their businesses.

B. Update on the Department of Accounting and General Services' Small Business Office Regarding the 2017 House Bill 1382, HD1, SD1, CD1, Relating to Procurement – Assists small business in the state procurement process by establishing a temporary small business assistance initiative, small business advisory council, small business office, and small business procurement coordinator position within the state procurement office, and appropriates funds

Chair Borge reminded the members that Ms. Sarah Allen, Administrator at DAGS' State Procurement Office (SPO), has been creating a small business office for the past three years. Mr. Ritchie, who represents DBEDT, sits on SPO's newly created small business council. He explained that the small business office is quite broad and goes beyond small business procurement and set-asides. The council will meet on a quarterly basis to oversee SPO's progress. Other members on the council include representatives from OHA and the Small Business Development Center.

Mr. Ritchie further explained that three (3) under-served groups are expected to be tracked and helped through this office, women-owned businesses, veterans, and native Hawaiians; a new procurement database is being created so that small businesses can self-identify. Also mentioned was that a definition of small business has yet to be established.

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 sent a letter to the executive director of Hawaii's Farm Bureau requesting names of members from the agriculture industry that may be interested in sitting on this Board. He reminded the members that the Board is statutorily in need of a member from the County of Kauai.

Members concurred with the proposed scheduled 2018 monthly meeting days and times.

Chair Borge updated the members on the hiring of the Board's office assistant which has been temporarily postponed until a convenient space to place the assistant is found. He requested the guidance of DBEDT's director for approaching the Governor's office regarding the Board's proposed change in Administrative Directive 09-01.

- VI. NEXT MEETING** – The next meeting is scheduled for Wednesday, November 15, 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 12:03 p.m.