

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

October 17, 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
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto
- Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich
Ashleigh Garcia

Office of the Attorney General

Krishna Jayaram

II. APPROVAL OF SEPTEMBER 19, 2018 MINUTES

Vice Chair Cundiff made a motion to accept the September 19, 2018 minutes, as presented. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

III. NEW BUSINESS

- A. Discussion and Action on the Proposed Amendments to Part VI, Rules and Regulations Governing the Operation of Commercial Food Truck Concessions in County Parks, promulgated by Department of Parks and Recreation, County of Kauai

Mr. Lenny Rapozo, Director at the County of Kauai Department of Parks and Recreation, explained that the proposed new rules will affect all small businesses that operate food trucks. Owners of food trucks will be mandatorily required by law to bid on concessions for permits, to conduct business in county park facilities, which will be granted every two years.

The initial six locations, utilized with food trucks, are Haena Beach Park, Black Pot Beach, Anini Beach, Nawiliwili, Koa Kea Beach and Salt Pond Park; these rules will essentially open the door to providing new venues for these types of food truck activities. Discussion leader Mr. Lydgate stated that the proposed rules are a fantastic initiative and provide a great opportunity to both locals and visitors.

Regarding the bidding process, Mr. Rapozo explained that once the rules are heard at the public hearing, and then adopted, applications for food trucks will proceed with another public hearing that will entail a competitive bid process with the highest bids winning out; items to be served in the food trucks are also part of the vetting and bidding process.

Some of the existing business owners do not want these trucks in their area. However, the public process is still necessary to vet the opinions of the businesses and community. Although Mr. Rapozo was not aware of the percentage of current food truck owners that were not in compliance with the current rules and regulations, a monthly oversight of the permits is performed.

Mr. Lydgate made a motion to move the proposed new rules to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 13 Subtitle 11 Ocean Recreation and Coastal Areas, as follows, promulgated by Department of Land and Natural Resources (DLNR)

1. Part I Small Boat Harbors – Chapter 234 Fees and Charges
2. Part III Ocean Waters, Navigable Streams and Beaches – Chapter 253 Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees

Mr. Ed Underwood, Administrator at DLNR's DOBOR (Division of Boating and Ocean Recreation) explained that the proposed rules have not been amended since 1994. They will have a definite impact on small business, particularly commercial watersport and commercial ocean tour companies, due to the increase in mooring fees. The increases are intended to align DOBOR's small boat harbors and other boating facilities with current market rates. Because DOBOR has not raised its fees in several years, it is currently not maximizing the revenue-generating potential of its small boat harbors and facilities

Specific examples of the fee increases include the following: commercial use permit fee will increase from the greater of \$200 per month or 3% of gross receipts to the greater of \$300 per month or 3% of gross receipts (increase of the minimum fee amount by \$100). The passenger fee will increase as follows: \$.030 per passenger embarking or disembarking for passenger vessels engaging only in interisland commerce to \$3.00 per passenger embarking or disembarking per day for the Lahaina small boat harbor (increase of \$2.70 applied to Lahaina small boat harbor only and per passenger day).

Also, \$1.00 per passenger per day embarking or disembarking for passenger vessels engaging in international or interstate commerce will increase to \$2.00 per passenger for small boat harbors other than Lahaina small boat harbors. In addition, commercial ramp use fees will increase from the greater of \$75 per month, or 2% of gross receipts, to the greater of \$300 per month or 3% of gross receipts.

Regarding outreach, Mr. Underwood stated that the proposed rules were uploaded onto DLNR's website over a year ago, over 10,000 mailings were sent out to all the tenants, and everyone who receives a permit was informed. Due to these notifications, approximately 35 comments were received by DOBOR with the biggest concern being the electric fee increase

by the boat owners, which is expected to increase to \$50 - \$150 per month. There was also concern over the anchorage fee charge; however, after DOBOR performed an analysis, the fee was lowered from \$1,000 to \$115 per day.

Chair Borge stated that it was his understanding that all the fees collected go back to restoration and upkeep of the small boat harbors. Mr. Underwood concurred, stating there is about a \$2 million loss incurred at the boat harbors which is subsidized by all the other land-based fees that are raised. Increased revenue at maximum moorage for Ala Wai Boat Harbor, for example, is expected to bring in an additional \$1 million per year. It was noted that DOBOR not only maintains the small boat harbors, it is tasked with managing all the launch ramps in the state, regulates all the state's commercial activity, is responsible for vessel registration and many others.

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

C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 235 Income Tax Law, as follows, promulgated by Department of Taxation (DoTax)

1. Section 235-98 Returns; form, verification and authentication, time of filing

Mr. Jacob Herlitz, Administrative Rules Specialist, explained that the proposed rule changes allow for automatic extensions to file income tax returns. Under the current rule an automatic six-month extension is granted to individuals, but a company must fill out a separate request for an extension.

Thus, the rules will allow that every tax return will get the same automatic six-month extension whether the taxpayer is an individual or a company; fees are not part of the proposal.

2. Section 235-1.14 (d) "Substantial gainful business or occupation", defined

Mr. Herlitz explained that this proposal will benefit blind, deaf or totally disabled persons. The amendments will prevent taxpayers, with substantially large gross business income, from taking large business deductions to reduce annual net income below \$30,000, and receive income and general excise tax benefits designed for persons and businesses incapable of generating substantial income due to disability.

Further, any small business wholly-owned by a disabled person, or persons, with gross earnings of \$60,000 or greater but with net earnings below \$30,000, may be affected by the proposal as the owner(s) of such a business would not qualify as totally or permanently disabled. In addition, a business would be ineligible for the general excise tax exemptions and reduced rates for businesses wholly owned by blind, deaf, or totally disabled persons while an individual will be eligible for income tax benefits on his or her individual income tax returns.

Second Vice Chair Yamanaka made a motion to move the proposed rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

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

Mr. John McHugh, Branch Manager at DoAg's Pesticides Branch, reminded the members that this Board reviewed and approved the proposed "Pesticides" rules in May of this year, but since then, Act 45, SLH was passed, which deals with new regulations for pesticide use.

Specifically, the changes are associated with reporting all users of restricted pesticides, which include farmers, parks and recreations, pest control companies, golf courses, companies that work with sanitation of drinking water, and utility pole companies, are impacted.

Another rule change, taken verbatim from the law, relates to buffer zones as it restricts spraying pesticides no closer than within 100 feet of a school's property. This may potentially impact small businesses; i.e., a farm, if its operations are near a school as it restricts applications of pesticides before 7:00 a.m., and after 4:00 p.m., to avoid potential drift of the pesticides.

All users of restricted-use pesticides were provided an email from DoAg's Pesticide Branch. Those businesses with no e-mail accessibility were mailed notifications of the rule changes. Any of the postal letters that came back "undelivered" will be hand-delivered by DoAg.

Mr. Lydgate made a motion to move the proposed rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed

E. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 178, Clean and Sober Homes Registry, promulgated by Department of Health (DOH)

Discussion leader Chair Borge stated that this program is a voluntary service, used by many small businesses. Mr. Eddie Mersereau, Chief at DOH's Alcohol and Drug Abuse Division, explained that the rules establish a voluntary clean and sober homes registry to assist persons recovering from substance abuse to have a safe, clean, and sober environment that supports recovery.

Currently, because many of the clean and sober homes follow a wide range of individual standards as to the processes that are followed and how the homes are operated, the proposed rules were created for the minimum base-line standards that all clean and sober home operators are required to follow.

The website for registering as a clean and sober home operator is already established; so currently anyone in the community can go onto it to see if a home is registered and in good standing. While other states offer these same types of registries, because some have gotten sued due to violations of fair housing laws, DOH is hoping to prevent the same type of violations and lawsuits to occur. Running the website is not expensive for the State as it is run by only one employee; also noted was that there is a standard \$1 million insurance policy required for clean and sober homes.

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

F. Discussion and Action on Proposed New HAR Title 4 Chapter 70, Plant and Non-Domestic Animal Quarantine, Plant Import Rules, Subchapter 15, "Introduction to Myrtaceae" (Myrtle Family Plants and Plant Prats), promulgated by DoAg

Mr. Jonathan Ho, Acting Manager at DoAg's Plant Quarantine Branch, and Mr. Lance Sakaino, Plant Specialist, explained that a new subchapter is being proposed to restrict the importation of any plant in the Myrtaceae family; eucalyptus and guava plants are the most familiar of the Myrtaceae family. There is currently an air-driven rust fungus/disease affecting this plant family, which was the same disease that decimated mountain and rose apple trees. Therefore, DoAg is attempting to restrict other strains and host material that introduces this disease from coming into Hawaii.

The primary small businesses impacted by these rules are florists and other businesses that import the plant material for forestry; however, most of the forestry plant material is not imported as there is enough local stock being produced to utilize. Myrtaceae plants are also used as filler of floral bouquets (silver dollar, cut myrtle, wax flower). For cut flower alternatives, the positive testimonies that were provided to this Board discussed how the industry was looking forward to helping to build-up local plant alternatives to replace the restricted plants.

Mr. Lydgate made a motion to move the proposed new subchapter to public hearing. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

A. Discussion and Action on the Board's 2018 Draft 201M-7 Periodic Review; Evaluation Report pursuant to Section 201M-7, HRS

The 201M-7 Report is submitted to the State legislators every two years and is a compilation of the information received from the agencies. Chair Borge noted it is disturbing that some agencies did not respond to repeated requests, which may be viewed as a reflection of this Board; the question of who oversees enforcement was posed.

It was suggested that the Governor, Senate President and House Speaker be informed of the lack of compliance on the part of some of the agencies. In past years, board member/discussion leaders met with agencies' directors and discussed the Board's statutory purview. It was acknowledged that meetings with the directors should be arranged again; letters will be sent out in January 2019 to the agencies introducing the Board's discussion leaders and requesting a meeting with the department heads.

The members discussed giving those agencies that have not responded back to the Board an opportunity to respond. Chair Borge may include a section in the report's "Message from the Chair" indicating that some of the agencies are not in compliance; this report is

essentially a “report card” to the State legislators and because it is posted on the Board’s website, its information is viewed by the business public.

Mr. Lydgate suggested that communication be sent out explaining the statute’s legal obligations with the Board reviewing any follow-up information at the November board meeting. If the agencies do not get back to the Board within a reasonable period, it should be conveyed in the 201M-7 Report.

Deputy Attorney General Jayaram stated that if an agency does not respond to the Board’s request, it may be construed that it does not have rules impacting small business; however, this should be confirmed. He suggested that SBRRB’s deputy attorney general, Jennifer Waihee-Polk, reach out to her counterparts at the Attorney General’s Office to let them know that this statutory requirement has not been met.

Mr. Lydgate made a motion for Deputy Attorney General Waihee-Polk to reach out to her counterparts at the Attorney General’s Office for possible feedback from those agencies that have not complied with Section 201M-7, HRS. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

Chair Borge made a motion to send a “status update” letter to the Senate President and House Speaker listing the agencies that have not complied to Section 201M-7, HRS, with copies submitted to those agencies that are not in compliance. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

B. Update on the Board’s Upcoming Advocacy Activities and Programs in Accordance with the Board’s Powers under Section 201M-5, HRS

1. Discussion of Possible Changes to the Board’s Monthly Meetings

After discussing the possibility of changing the ongoing board meeting times and days, it was decided that the November 2018 board meeting will move from the 21st to the 7th and the December 2018 meeting moved from the 12th to the 5th. The times of the meetings will remain at 10:00 a.m.

Chair Borge made a motion to change the ongoing board meeting times and days to Thursdays at 10:00 a.m., beginning January 2019. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

C. NEXT MEETING – The next meeting is scheduled for Wednesday, November 7, 2018, in Conference Room 405, Leiopapa A Kamehameha, State Office Tower, 235 South Beretania Street, Honolulu, Hawaii at 10:00 a.m.

D. ADJOURNMENT – Second Vice Chair Yamanaka made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:50 a.m.