

# March 20, 2013 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Chu Lan Shubert-Kwock	NA	Oahu	Parking Pass	X
Howard Lum	NA	Oahu	Parking Pass	✓
Leslie Mullens	HA	Maui	Parking Pass	X
Barbara Bennett	HA	Kauai	Parking Pass	X
Kyoko Kimura	HA	Maui	Parking Pass	X
Mary Alice Evans	NA	Oahu	NA	✓
Anthony Borge	NA	Oahu	NA	X

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	✓
Make <sup>15</sup> 12+ copies of rule packages for board packets - continuous	✓
Poll board attendance	✓
Prepare TAF for Director's approval - ASAP	✓
Airline booking ASAP - Linda G. (ASO)	✓
Draft Agenda to Chair - By 3-11-13 OIP/Dep Atty Gen ✓	✓
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office NA = DBEDT web site	✓ ✓
Send Agendas to those people who requested it	✓
Chalun/Howard/Kyoko/Anthony = Hearing Mail approved agenda to board members, M. Ahn <del>ETC</del> M. Ahn ✓	✓
Mail board packets Tues or Wed. Mar. 12th or 13th Barbara's - 14th NAE - 14th	✓ ✓
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	✓

STAFF				
Margaret Ahn				X
Dori Palcovich				X

Post Meeting Checklist	

# AMERICAN INSTITUTE OF ARCHITECTS

CPC  
2:30 pm

March 18, 2013

Honorable Angus McKelvey, Chair  
Senate Committee on Ways & Means

Re: **Senate Bill 213 SD2**  
**Relating to the State Building Code**

Dear Chair McKelvey and Members of the Committee,

My name is Daniel Chun, Government Affairs Chair of the American Institute of Architects (AIA) Hawaii State Council. AIA **SUPPORTS THE INTENT** of SB 213 that adds some construction industry voting membership to the State Building Code Council SBCC. AIA offers the following points for your consideration as this bill moves forward:

## **Keep parity in the design and construction industry**

Currently design professional societies AIA and the SEA/OH Structural Engineers Association of Hawaii hold voting membership. Other states also include voting membership by construction organizations; including important sectors of the industry such as homebuilders. AIA recommends that as you add more voting members that you keep some parity between the complementary halves of the construction industry.

## **AIA STRONGLY SUPPORTS funding state building codes**

Since its inception SBCC has achieved your primary public policy goal of updating and unifying building codes across Hawaii. SBCC greatly benefited from support it received from former comptroller Russ Saito who believed that the DAGS should be the standard setting agency for state construction and, by implication, all Hawaii construction per HRS 107-25.

The record shows that past administrations did not even release monies from the Hawaii Hurricane Relief Fund as directed by your original legislation. The important task of code review and amendments has relied on the goodwill and expertise of the four county building officials and private sector such as the AIA and SEA/OH. **But the administrative rule making has proven daunting and cannot be practically or legally done by volunteers. AIA adds that the process of Small business Regulatory Review Board has made the administrative rule process much more time consuming for our several needed updates of rules.**

In response to SBCC need for a more sustainable funding mechanism, we explored several funding sources such as:

- o County building permit surcharges. While this is one of the most common funding sources in many states, the number of building permits issued in Hawaii when surcharged with reasonable flat dollar fees grosses roughly about \$100,000. [\$10 per building permit and \$2 per residential unit permit that compare with state of Oregon surcharges] The four counties would

then need to remit the fees to the state after withholding any necessary processing fees.

- Hawaii Hurricane Relief Fund. There is a strong connection between building codes and property insurance related to hurricanes. Good building codes reduce property insurers risk exposure and thus insurers should be able to charge lowered premiums to consumers. The original legislation required a set-aside from HHRF and subsequent bills have sought interim funding from the Fund. The Fund has been raided by this legislature and any funding is subject to the legislature giving the DCCA authority to transfer money to SBCC per the original language of SB 213.
- Senate Bill 683. SBCC special fund that was introduced at AIA request for a special fund using a small percentage set-aside of CIP funds. The Department of Budget & Finance submitted opposing comments on this bill; saying adopting a state building code has no connection to state building construction. Other objection voiced is that a percent set-aside might yield too much money from the CIP appropriation. [the reason the percent set-aside is high is that the governor does not always release projects for construction] SB 683 was heard at Senate PSM, but deferred. Technically "alive."

In the 2012 session this legislature passed DCAB Review Fee HRS 103-50. DCAB charges review fees on state and county construction after payment of fees by the design architect or engineer. As public design contractors our design costs are paid using state and county CIP funds. AIA is not opposed to the DCAB fee. But we question why accessibility standards, that are not building codes, are managed by staff paid with CIP funds via the public design contractor? This session we are told that staffing the SBCC cannot be paid using a very small portion of CIP funds. AIA ventures that an SBCC staff would be much smaller than the current DCAB staff. HRS 103-50 is useful in its definition of what kinds of CIP are subject to its review by exempting most infrastructure.

### **Amend HRS 107-I.5 to support the State Building Code**

We attach proposed language to support the state building code using the DAGS project assessment fund HRS 107-I.5. The fund supports general engineering services for state funded construction. It is a logarithmic curve fee assessed each project by the DAGS comptroller. Using a logarithmic curve seems fairer to project budgets and has flexibility to be internally adjusted by DAGS. This avoids criticism voiced about generating too large of any new special fund. AIA suggests modifying 107-I.5 to add a "bright light" public policy reference to the state building code as part of quality control in general engineering services. The fee might be assessed only on the same kinds of projects subject to the DCAB fee. Such public policy will be a more sustainable funding mechanism as suggested in testimony from the State Fire Council. AIA questions why there is generally supportive testimony from several state agencies, contrasted with no funding from the state.

Alternatively, you might augment the DAGS operating budget in the House budget bill to make more certain that some modest appropriation is received for the state building code. Or change public policy and grant the HHRF limited authority to transfer some funds for the state building code might be an interim funding until the construction industry can convince the state that more sustainable funding is required. Thank you for this opportunity to SUPPORT SB 213 SD2.

**SB 213 SD2 proposed HD1 for funding state building codes  
Revise HRS 107-22 ( c )**

(c) Expenditures to amend and adopt state building codes shall be made from the public works assessment fund in accordance with section 107-1.5. Members shall serve without compensation, but shall be reimbursed for expenses, including travel expenses necessary for the performance of their duties.

**SB 213 SD2 proposed HD1 for funding state building codes  
Revise HRS 107-1.5**

§107-1.5 Public works project assessment fund. (a) There shall be established in the department of accounting and general services a revolving fund to be known as the public works project assessment fund for the purposes of defraying costs involved in carrying out state construction projects managed ~~by the department~~; managing funds representing accumulated vacation and sick leave credits and retirement benefits for non-general funded employees in the construction program in accordance with section 78-23; equitably collecting and distributing the costs of other current expenses associated with capital improvement, repairs and maintenance, and repairs and alterations projects; and managing the payments of employee transportation requirements such as car mileage reimbursements in accordance with applicable law and collective bargaining agreements.

(b) The comptroller shall make reasonable assessments on state construction projects managed ~~by the department of accounting and general services~~ to carry out the a program of centralized engineering services and quality control; including state building codes and standards. The assessments shall be based on a logarithmic curve developed by the department for such services. All assessments collected shall be deposited into the public works project assessment fund.

(c) All expenditures from the public works project assessment fund shall be made by the comptroller in accordance with applicable law and rules.

**Commentary by AIA**

*Current HRS 107-1.5 text seems obsolete because the DAGS no longer provides engineering services for various state entities like DOE or the University of Hawaii. However, we understand that such a fund(s) still exists and that state construction projects are still assessed. If we can recognize car mileage reimbursements in the HRS 107-1.5 text, we should be able to recognize the state building code as well.*



Re: March 20th SBRRB Meeting  
Kyoko Kimura  
to:  
Dori Palcovich  
03/06/2013 06:45 AM  
Hide Details  
From: Kyoko Kimura <[kkimura@hotelwailea.com](mailto:kkimura@hotelwailea.com)>  
To: Dori Palcovich <[DPalcovi@dbedt.hawaii.gov](mailto:DPalcovi@dbedt.hawaii.gov)>,

3pm in 016

Mahalo

On Mar 6, 25 Heisei, at 6:23 AM, "Dori Palcovich" <[DPalcovi@dbedt.hawaii.gov](mailto:DPalcovi@dbedt.hawaii.gov)> wrote:

Yes, I am working on testimony for you right now.

Do you have a time for the hearing? Is it in hearing room 202?

Are you planning to attend?

Dori

From: Kyoko Kimura <[kkimura@hotelwailea.com](mailto:kkimura@hotelwailea.com)>  
To: Dori Palcovich <[DPalcovi@dbedt.hawaii.gov](mailto:DPalcovi@dbedt.hawaii.gov)>,  
Date: 03/06/2013 05:46 AM  
Subject: Re: March 20th SBRRB Meeting

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By the way, my confirmation hearing is on the 13th.

On Mar 6, 25 Heisei, at 5:24 AM, "Dori Palcovich" <[DPalcovi@dbedt.hawaii.gov](mailto:DPalcovi@dbedt.hawaii.gov)> wrote:

Great, thank you.

From: Kyoko Kimura <[kkimura@hotelwailea.com](mailto:kkimura@hotelwailea.com)>  
To: Dori Palcovich <[DPalcovi@dbedt.hawaii.gov](mailto:DPalcovi@dbedt.hawaii.gov)>,  
Date: 03/05/2013 03:57 PM  
Subject: RE: March 20th SBRRB Meeting

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I will attend.

8:15am

4:49pm

Flight and a car please.

**From:** Dori Palcovich [<mailto:DPalcovi@dbedt.hawaii.gov>]

**Sent:** Tuesday, March 05, 2013 2:00 PM

**To:** [clskwock@gmail.com](mailto:clskwock@gmail.com); [Leslie@theplaybookgroup.com](mailto:Leslie@theplaybookgroup.com); Kyoko Kimura; Mary Alice Evans; [chinatownco58@yahoo.com](mailto:chinatownco58@yahoo.com); [tony@rmasalesco.com](mailto:tony@rmasalesco.com); Barbara Bennett

**Subject:** March 20th SBRRB Meeting

Hi Everyone:

It's that time again! Please confirm your attendance at the March 20th SBRRB meeting. If you cannot make it, please let me know.

For the neighbor island people, please let me know what time works for you in terms of your travel, and if you need a car rental.

Thank you.

Dori

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING - DRAFT

February 20, 2013

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

- I. **CALL TO ORDER:** Ms. Mullens called the meeting to order at 9:40 p.m., with a quorum present.

**MEMBERS PRESENT:**

- Chu Lan Shubert-Kwock
- Leslie Mullens
- Howard Lum
- Barbara Bennett
- Kyoko Kimura
- Anthony Borge
- Mary Alice Evans

**ABSENT MEMBERS:**

- None

**STAFF:** DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

### II. DISCUSSION AND ELECTION OF ACTING CHAIR FOR FEBRUARY 20, 2013

Mr. Borge made a motion for Ms. Shubert-Kwock to be the Acting Chair for today's board meeting. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

### III. APPROVAL OF THE DECEMBER 10, 2012 MINUTES FOR 9:30 a.m., and 1:00 p.m. MEETINGS

Mr. Borge made a motion to accept the December 10, 2012 minutes from the 9:30 a.m. meeting, as amended. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

Ms. Mullens made a motion to accept the December 10, 2012 minutes from the 1:00 p.m. meeting, as presented. Mr. Borge seconded the motion, and the Board members unanimously agreed.

### IV. NEW BUSINESS

- A. Proposed Amendments to HAR Title 11 Chapter 54 Water Quality Standards, and HAR Title 11 Chapter 55 Water Pollution Control (Department of Health (DOH))

Mr. Alec Wong, Engineer from the Clean Water Branch at DOH, discussed the purpose of the rule amendments for HAR Chapter 11 Water Quality Standards and HAR Title 11 Chapter 55 Water Pollution Control, and introduced staff members from the Clean Water Branch.

**C. Proposed Amendments to Title 4 Chapter 143 Coffee (Department of Agriculture (DOA))**

Ms. Jeri Kahana, Acting Administrator at DOA, explained that the proposed rule amendments are the result of Act 328, SLH 2012. The Act makes the offense of false labeling in regards to the geographic origin of Hawaii grown coffee a class C felony, authorizes DOA to adopt administrative rules relating to the inspection and documentation of the geographic origin of Hawaii-grown coffee beans, and removes the requirement that all Hawaii-grown green coffee beans shall be inspected and certified by DOA unless otherwise specified by DOA.

The Act also requires that no Hawaii-grown coffee beans is to be shipped outside of the area of the geographic origin unless marked with or contain documentation of geographic origin by DOA. In addition, amendments require Hawaii-grown green or natural coffee be marked with the exact grade or lower grade, and repeals the mandatory certification of coffee by making it voluntary; thus, those who wish may request certification services. Ms. Kahana stated that the Kona coffee industry reported that coffee berry borer damage has resulted in diminished quality that may jeopardize the region's position in the global coffee market.

Ms. Mullens made a motion for the proposed rules to proceed to public hearing. Mr. Lum seconded the motion, and the Board members unanimously agreed.

**D. Correspondence from Dora Beck, P.E., Acting Director, County of Hawaii, Department of Environmental Management, dated January 22, 2013, regarding "Small Business Impact Statement Education of Tourists Update," under Ordinance 12-1, Section 1, Article IV, Rules Relating to Plastic Bag Reduction**

Ms. Bennett partially read the subject correspondence to the members and explained that County of Hawaii Deputy Corporation Counsel, Ivan Torigoe, took heed to the board's recommendation that the impact of the plastic bag reduction to tourists should be addressed. She stated that it was commendable for the County to send this letter to the Board and address this matter after it was discussed at the last board meeting.

**V. LEGISLATIVE MATTERS:**

**A. Delegation of Authority to a Board Member and/or Staff to Submit Testimony at the State Legislature on behalf of the Board**

Mr. Borge made a motion for DBEDT staff to draft testimony on behalf of the board for the Chair or Acting Chair's review for submission to the Hawaii State Legislature. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

Ms. Mullens made a motion to delegate Mr. Borge to represent and present testimony for the board to the State legislature. Ms. Shubert-Kwock seconded the motion and the Board members unanimously agreed.



B. Review Board's Brochure for update and outreach purposes

The members reviewed the prior brochure used by this board and recommended several changes to it. After hearing several suggestions, Ms. Bennett indicated she had enough feedback to amend the brochure, and will bring those changes back to the members at the next meeting for review.

While discussing the board's purpose and mission, when Mr. Lum questioned how small businesses come before this board, it was indicated that when there is a proposed rule or rule amendment that impacts small business there is a specific process by which an agency will create a small business impact statement. Deputy Attorney General Ahn stated that this process reflects a majority of the rules that will come before this board. Separate from that are complaints from small businesses about the rules where small businesses may come directly to DBEDT staff or a board member.

There is another process in the board's statute where a small business will first go to an agency about an existing rule. Once an agency is contacted by a small business, it is required to respond back to that small business, with a copy of the response sent to this board. If the small business is unhappy with the response from the agency, they will then come to this board. This process may be another option when referring a small business that has concerns with an existing administrative rule; the process outlined in 201M-6, HRS, petition for regulatory review.

C. Review of Board's "Member" Webpage

The members reviewed the webpage from the Board's website and requested that email addresses be removed; DBEDT staff will remove them immediately.

D. Review of Public Agency and Meetings Records (Sunshine Law), Chapter 92, HRS

Ms. Bennett commented that she needs to become acquainted with the Sunshine Law as it applies to this Board. Deputy Attorney Ahn explained that, as a general rule, if there is official board business, a board member must not discuss it outside the public meeting. However, there are some exceptions, specifically in regards to this Board, where two, three or four board members are allowed to discuss board business outside a public hearing as long as there is no commitment to vote; for example, a proper number of members may discuss the selection of board officers outside a board meeting.

E. Leslie Mullens to facilitate discussion on: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making

Ms. Mullens has found that setting ground rules and common values help move meetings and discussions along and also make the time together more valuable and effective. Recommended tools to effectuate ground rules include meeting agreements, guiding principles, and a strategic checklist. Ms. Mullens reviewed "best practice" meeting agreements that this board may consider, such as "it is important to speak with integrity, to say only what you mean, to express what you really mean, to ask questions, and to communicate clearly in order to avoid misunderstandings."

she was disappointed and distressed when Ms. Evans pulled her aside, brought her into her office, told her that she did not think she should be chair, and that she should withdraw. She also noted that even though this board is independent and should make decisions as an independent entity, she was intimidated by Ms. Evans because she perceived Ms. Evans to be wearing her "deputy director hat." Ms. Evans responded to Ms. Shubert-Kwock that when they talked during the lunch break at the last meeting, she had explained that because Ms. Shubert-Kwock had such passion for small business that she would be more effective and could use her time more efficiently as a member and as an advocate for small business as opposed to being a chair.

Ms. Evans made a motion that Ms. Mullens be made Chair, and Ms. Kimura seconded; Mr. Lum made a motion that Ms. Shubert-Kwock be made Chair, and Mr. Borge seconded. Ms. Bennett, Mr. Lum, Mr. Borge and Acting Chair Shubert-Kwock voted for Ms. Shubert-Kwock, and Ms. Evans, Ms. Kyoko and Ms. Mullens voted for Ms. Mullens. As a result, the motions did not pass.

This agenda item is deferred until the next board month.

In order to maintain continuity, DBEDT staff will work with the acting chair of the board meeting until the next board meeting.

## **VI. ADJOURNMENT**

Mr. Borge made a motion to adjourn the meeting at 2:32 p.m.; Ms. Kimura seconded and the board members agreed.

## **IX. NEXT MEETING**

Scheduled for 9:30 a.m., Wednesday, March 20, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, HI

**Visitors Sign-in-Sheet - Small Business Regulatory Review Board - Mar., 20, 2013**

	Name	Title	Organization	Email	Phone
1	Marie Williams	Planner	Hawaii County	mwilliams@hawaii.gov	241-4067
2	Aileen Befitel	Program Specialist	DHS/Med-QUEST	abefitel@medicaid.dhs.state.hi.us	6298074
3	Alicia Burnham	Special Agent	Tax	alicia.l.burnham@hawaii.gov	
4	Jacob Herlitz	Rules Specialist	Tax	Jacob.L.HERLITZ@Hawaii.gov	587-5334
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Don's

Small Business Regulatory Review Board Meeting

Wednesday, March 20, 2013

9:30 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594  
Fax 808586-2572

### AGENDA

Wednesday, March 20, 2013 ★ 9:30 a.m.

No. 1 Capitol District Building  
250 South Hotel Street - Conference Room 436

Neil Abercrombie  
Governor

Richard C. Lim  
Director, DBEDT

Mary Alice Evans  
Deputy Director, DBEDT

#### Members

Chu Lan Shubert-Kwock  
Oahu

Howard Lum  
Oahu

Anthony Borge  
Oahu

Barbara Bennett  
Kauai

Leslie Mullens  
Maui

K. Y. Kimura  
Maui

Richard C. Lim  
Director, DBEDT  
Voting Ex Officio

- I. **Call to Order – Indicate the time meeting was called to order**
- II. **Election of a Temporary Chair**
- III. **Approval of February 20, 2013 Meeting Minutes**
- IV. **Old Business**
  - A. Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 17 Chapter 1722.3 Basic Health Hawaii; Chapter 1725 Assets; Chapter 1727 QUEST; Chapter 1739.1 Authorization, Payment, and Claims in the Fee-for-Service Medical Assistance Program for Non-institutional Services (Department of Human Services) – **Aileen Befitel, Program Specialist / Discussion Leader – Mary Alice Evans**
- V. **New Business**
  - A. Proposed Amendments for Kauai County Code Chapter 10 Section A, Lihue Town Core Urban Design District (County of Kauai – Planning Department) - **Marie Williams, Kauai County Planning Dept. / Discussion Leader – Barbara Bennett**
  - B. Proposed HAR Title 18 Chapter 231 Administration of Taxes (Department of Taxation) – **Ted Shiraishi, Administrative Rules Officer, DoTax / Acting Discussion Leader – Tony Borge**
- VI. **Legislative Matters - Update - All GM's were recommended by the Committee on Economic Development, Government Operations and Housing to **advise & consent to the Nominations****
  1. Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015
  2. Governor's Message No. 527, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2014
  3. Governor's Message No. 528, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Chu Lan Shubert-Kwock, for a term to expire June 30, 2016
  4. Governor's Message No. 529, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Howard Lum, for a term to expire June 30, 2014
  5. Governor's Message No. 530, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30, 2016

6. Governor's Message No. 531, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Leslie Mullens, for a term to expire June 30, 2015

**VII. Administrative Matters**

- A. Election of a Board Chair; pursuant to Section 201M-5(d), and Election of Vice Chair and Second Vice Chair - (?)
- B. Leslie Mullens to facilitate discussion on: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making – Leslie (handouts)

**VIII. Adjournment**

- IX. Next Meeting:** Scheduled for Wednesday, April 17, 2013, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594  
Fax 808586-2572

### AGENDA

Wednesday, March 20, 2013 ★ 9:30 a.m.

No. 1 Capitol District Building  
250 South Hotel Street - Conference Room 436

Neil Abercrombie  
Governor

Richard C. Lim  
Director, DBEDT

Mary Alice Evans  
Deputy Director, DBEDT

#### Members

Chu Lan Shubert-Kwock  
Oahu

Howard Lum  
Oahu

Anthony Borge  
Oahu

Barbara Bennett  
Kauai

Leslie Mullens  
Maui

Kyo Kimura  
Maui

Richard C. Lim  
Director, DBEDT  
Voting Ex Officio

#### I. Call to Order

#### II. Election of a Temporary Chair

#### III. Approval of February 20, 2013 Meeting Minutes

#### IV. Old Business

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#### V. New Business

- A. Proposed Amendments for Kauai County Code Chapter 10 Section A, Lihue Town Core Urban Design District (County of Kauai – Planning Department)  
B. Proposed HAR Title 18 Chapter 231 Administration of Taxes (Department of Taxation)

#### VI. Legislative Matters - Update

1. Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015
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III. Approval of February 20, 2013 Meeting Minutes

*Minutes are forthcoming*

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING - DRAFT

February 20, 2013

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

- I. **CALL TO ORDER:** Ms. Mullens called the meeting to order at 9:40 p.m., with a quorum present.

**MEMBERS PRESENT:**

- Chu Lan Shubert-Kwock
- Leslie Mullens
- Howard Lum
- Barbara Bennett
- Kyoko Kimura
- Anthony Borge
- Mary Alice Evans

**ABSENT MEMBERS:**

- None

**STAFF:** DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

### II. DISCUSSION AND ELECTION OF ACTING CHAIR FOR FEBRUARY 20, 2013

Mr. Borge made a motion for Ms. Shubert-Kwock to be the Acting Chair for today's board meeting. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

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### IV. NEW BUSINESS

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**C. Proposed Amendments to Title 4 Chapter 143 Coffee (Department of Agriculture (DOA))**

Ms. Jeri Kahana, Acting Administrator at DOA, explained that the proposed rule amendments are the result of Act 328, SLH 2012. The Act makes the offense of false labeling in regards to the geographic origin of Hawaii grown coffee a class C felony, authorizes DOA to adopt administrative rules relating to the inspection and documentation of the geographic origin of Hawaii-grown coffee beans, and removes the requirement that all Hawaii-grown green coffee beans shall be inspected and certified by DOA unless otherwise specified by DOA.

The Act also requires that no Hawaii-grown coffee beans is to be shipped outside of the area of the geographic origin unless marked with or contain documentation of geographic origin by DOA. In addition, amendments require Hawaii-grown green or natural coffee be marked with the exact grade or lower grade, and repeals the mandatory certification of coffee by making it voluntary; thus, those who wish may request certification services. Ms. Kahana stated that the Kona coffee industry reported that coffee berry borer damage has resulted in diminished quality that may jeopardize the region's position in the global coffee market.

Ms. Mullens made a motion for the proposed rules to proceed to public hearing. Mr. Lum seconded the motion, and the Board members unanimously agreed.

**D. Correspondence from Dora Beck, P.E., Acting Director, County of Hawaii, Department of Environmental Management, dated January 22, 2013, regarding "Small Business Impact Statement Education of Tourists Update," under Ordinance 12-1, Section 1, Article IV, Rules Relating to Plastic Bag Reduction**

Ms. Bennett partially read the subject correspondence to the members and explained that County of Hawaii Deputy Corporation Counsel, Ivan Torigoe, took heed to the board's recommendation that the impact of the plastic bag reduction to tourists should be addressed. She stated that it was commendable for the County to send this letter to the Board and address this matter after it was discussed at the last board meeting.

**V. LEGISLATIVE MATTERS:**

**A. Delegation of Authority to a Board Member and/or Staff to Submit Testimony at the State Legislature on behalf of the Board**

Mr. Borge made a motion for DBEDT staff to draft testimony on behalf of the board for the Chair or Acting Chair's review for submission to the Hawaii State Legislature. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

Ms. Mullens made a motion to delegate Mr. Borge to represent and present testimony for the board to the State legislature. Ms. Shubert-Kwock seconded the motion and the Board members unanimously agreed.

B. Review Board's Brochure for update and outreach purposes

The members reviewed the prior brochure used by this board and recommended several changes to it. After hearing several suggestions, Ms. Bennett indicated she had enough feedback to amend the brochure, and will bring those changes back to the members at the next meeting for review.

While discussing the board's purpose and mission, when Mr. Lum questioned how small businesses come before this board, it was indicated that when there is a proposed rule or rule amendment that impacts small business there is a specific process by which an agency will create a small business impact statement. Deputy Attorney General Ahn stated that this process reflects a majority of the rules that will come before this board. Separate from that are complaints from small businesses about the rules where small businesses may come directly to DBEDT staff or a board member.

There is another process in the board's statute where a small business will first go to an agency about an existing rule. Once an agency is contacted by a small business, it is required to respond back to that small business, with a copy of the response sent to this board. If the small business is unhappy with the response from the agency, they will then come to this board. This process may be another option when referring a small business that has concerns with an existing administrative rule; the process outlined in 201M-6, HRS, petition for regulatory review.

C. Review of Board's "Member" Webpage

The members reviewed the webpage from the Board's website and requested that email addresses be removed; DBEDT staff will remove them immediately.

D. Review of Public Agency and Meetings Records (Sunshine Law), Chapter 92, HRS

Ms. Bennett commented that she needs to become acquainted with the Sunshine Law as it applies to this Board. Deputy Attorney Ahn explained that, as a general rule, if there is official board business, a board member must not discuss it outside the public meeting. However, there are some exceptions, specifically in regards to this Board, where two, three or four board members are allowed to discuss board business outside a public hearing as long as there is no commitment to vote; for example, a proper number of members may discuss the selection of board officers outside a board meeting.

E. Leslie Mullens to facilitate discussion on: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making

Ms. Mullens has found that setting ground rules and common values help move meetings and discussions along and also make the time together more valuable and effective. Recommended tools to effectuate ground rules include meeting agreements, guiding principles, and a strategic checklist. Ms. Mullens reviewed "best practice" meeting agreements that this board may consider, such as "it is important to speak with integrity, to say only what you mean, to express what you really mean, to ask questions, and to communicate clearly in order to avoid misunderstandings."

she was disappointed and distressed when Ms. Evans pulled her aside, brought her into her office, told her that she did not think she should be chair, and that she should withdraw. She also noted that even though this board is independent and should make decisions as an independent entity, she was intimidated by Ms. Evans because she perceived Ms. Evans to be wearing her "deputy director hat." Ms. Evans responded to Ms. Shubert-Kwock that when they talked during the lunch break at the last meeting, she had explained that because Ms. Shubert-Kwock had such passion for small business that she would be more effective and could use her time more efficiently as a member and as an advocate for small business as opposed to being a chair.

Ms. Evans made a motion that Ms. Mullens be made Chair, and Ms. Kimura seconded; Mr. Lum made a motion that Ms. Shubert-Kwock be made Chair, and Mr. Borge seconded. Ms. Bennett, Mr. Lum, Mr. Borge and Acting Chair Shubert-Kwock voted for Ms. Shubert-Kwock, and Ms. Evans, Ms. Kyoko and Ms. Mullens voted for Ms. Mullens. As a result, the motions did not pass.

This agenda item is deferred until the next board month.

In order to maintain continuity, DBEDT staff will work with the acting chair of the board meeting until the next board meeting.

## **VI. ADJOURNMENT**

Mr. Borge made a motion to adjourn the meeting at 2:32 p.m.; Ms. Kimura seconded and the board members agreed.

## **IX. NEXT MEETING**

Scheduled for 9:30 a.m., Wednesday, March 20, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, HI

#### IV. Old Business

A. Small Business Statement After Public Hearing for HAR Title 17 Chapter 1722.3 Basic Health Hawaii; Chapter 1725 Assets; Chapter 1727 QUEST; Chapter 1739.1 Authorization, Payment and Claims in the Fee-for-Service Medical Assistance Program for Non-institutional Services (DHS)

# RULE MAKING CHECKLIST FOR "SMALL BUSINESS STATEMENT" AFTER PUBLIC HEARING

**DEPARTMENT OR AGENCY:** DHS/MQD/PPDO  
**Chapter(s) and Title:** Chapters 17-1722.3, 17-1725, 17-1727 and 17-1739.1  
**Name and Phone Number of Contact Person:** Priscilla Thode  
Phone Number: 692-8140

1. Summarize how the comments or testimonies from small business were solicited.

A public hearing was conducted on February 21, 2013 to gather comments and testimonies. The announcement of the public hearing was published in the Honolulu Star-Advertiser, Hawaii Tribune Herald, West Hawaii Today, The Maui News, and the Garden Island on January 16, 2013.

2. Summarize the written and oral comments or testimonies received from the public and small business regarding any proposed rule that affects small business.

There were no written or oral comments or testimonies received from the public and small business pertaining to the proposed rules above.

3. Summarize the department's or agency's response to the comments or testimonies received in item 2.

There were no written or oral comments or testimonies received, in turn, no responses were given by the department.

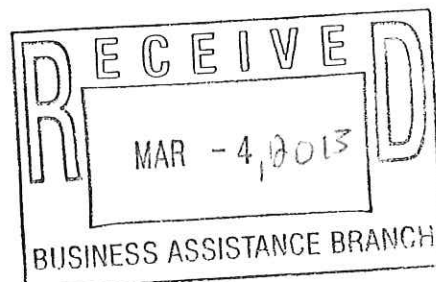
4. How many persons attended the public hearing (excluding Med-QUEST staff)? 3

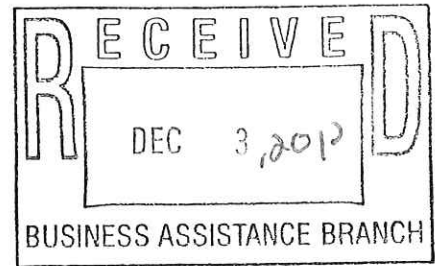
5. How many persons orally testified at the public hearing (including before the public hearing on the neighbor islands)? 0

6. How many persons submitted written comments or testimonies in response to the proposed rule (including before the public hearing on the neighbor islands)? 0

7. If there was a request to change the proposed rule at the public hearing in a way that affects small business and no change was made, explain why the request was not accepted.

The Department did not receive any requests to change the proposed rules that would affect small businesses.





DEPARTMENT OF HUMAN SERVICES

Amendments to Chapters 17-1722.3, 17-1725, 17-1727 and  
17-1739.1

Hawaii Administrative Rules

1. Section 17-1722.3-2, Hawaii Administrative Rules, is amended by amending the definition of "Benefit year" to read as follows:

\*\*\*

"Benefit year" means [the period from the first day of July of one calendar year through the thirtieth day of June of the following calendar year.] a continuous twelve month period generally following an open enrollment period.

\*\*\*

2. Section 17-1722.3-2, Hawaii Administrative Rules, is amended by deleting the definitions of "Annual plan change period", "Fee-for-service" and "QExA" to read as follows:

\*\*\*

["Annual plan change period" means the period as determined by the department under section 17-1722.3-14 when enrollees may disenroll from the enrollee's current participating health plan and enroll in another participating health plan."]

\*\*\*

["Fee-for-service" means the department's system of reimbursing health care providers for each eligible service provided."]

\*\*\*

["QExA" means the QUEST Expanded Access program that delivers medical and behavioral health services through health plans employing managed care concepts, to certain individuals who are aged, blind or disabled"]

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(1) Applications shall be processed in the chronological order of their receipt by the med-QUEST division;

(2) Applications shall be processed in the following manner depending on the method used in subsection (a):

(A) If for a specified duration, all applications received after the specified duration shall be denied; and

(B) If up to a statewide enrollment limit, [All] all pending applications received during the open application period shall be denied when the number of individuals that have been determined eligible, when enrolled in a participating health plan, would meet the [maximum statewide enrollment allowed in subsection (b)] statewide enrollment limit; and

(3) Applications pending more than 45 days before a denial notification is issued shall not be subject to the provisions of subsection 17-1711-13(i).

[(d) An open application period shall not occur more than once per calendar year."] [Eff 04/01/10; am ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**5. Section 17-1722.3-13, Hawaii Administrative Rules, is amended to read as follows:**

"§17-1722.3-13 Enrollment in and choice of a participating health plan. (a) The department has the sole authority to enroll and disenroll an individual in a participating health plan.

(b) An eligible individual shall [within, ten days, select from among the participating] be enrolled in a health [plans] plan [available in the service area in which the] for purposes of providing the individual [resides if there is more than one

- (6) Relocation of the enrollee to a service area where the health plan does not provide service;
- (7) Change in foster placement if necessary for the best interest of the child;
- (8) The individual missed the open enrollment period due to temporary loss of Medicaid eligibility and shall be re-enrolled in their previous assigned health plan within sixty (60) days of losing eligibility;
- (9) The enrollee chooses a health plan during the open enrollment period and that health plan's enrollment is capped;
- (10) Provisions in federal or state statutes or administrative rules;
- (11) Member's PCP is not in the health plan's provider network and is in the provider network of a different health plan;
- (12) The health plan's refusal, because of moral or religious objections, to cover the service the enrollee seeks as allowed for in the contract with the health plan;
- (13) The enrollee's need for related services (i.e., a cesarean section and a tubal ligation) to be performed at the same time and not all related services are available within the network and the enrollee's primary care physician or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk;
- (14) Lack of direct access to women's health care specialists for breast cancer screening, pap smears and pelvic exams;
- (15) Other reasons, including but not limited to, poor quality of care, lack of access to covered services, or lack of access to providers experienced in dealing with the enrollee's health care needs, lack of direct access to certified nurse midwives, pediatric nurse practitioners, family nurse practitioners, if available in the

- (1) An enrollee who is enrolled in a non-returning plan shall be allowed to select from the available participating health plans;
  - (2) If the enrollee is required to select a participating health plan, but does not select a participating health plan during the annual plan change period, enrollment in a participating health plan shall be assigned by the department;
  - (3) Changes in enrollment from one participating health plan to another during the annual plan change period shall be effective the first day of the month as determined by the department and shall generally extend to the following year;
  - (4) In the absence of a choice of participating health plans in a service area, an enrollee who resides in that particular service area shall not participate in the annual plan change period.
- (b) Exceptions to subsection (a) include the following:
- (1) Compliance with an administrative or judicial decision;
  - (2) Termination of the participating health plan contract;
  - (3) Mutual agreement by the participating health plans involved, the enrollee, and the department;
  - (4) As provided in sections 17-1727-61 and 17-1727-62;
  - (5) Change of residence by an enrollee from one service area to another with a choice of more than one participating health plan:
    - (A) The individual shall be allowed ten days to select a participating health plan servicing the new service area in which the individual resides; and
    - (B) If a selection is not made within ten days of request, enrollment in a

[Eff 04/01/10; am ] (Auth:  
HRS §346-14) (Imp: HRS §346-14)

**8. Section 17-1722.3-17, Hawaii Administrative Rules, is repealed:**

[“§17-1722.3-17 Coverage of Basic Health Hawaii eligibles prior to the date of enrollment. (a) An applicant who is initially determined eligible for Basic Health Hawaii shall be eligible for Basic Health Hawaii benefits provided by the department on a fee-for-service basis as of the date of eligibility through the date of enrollment.

(b) Health care services received on a fee-for-service basis are limited to the benefits identified in this chapter. Benefits received during this period shall be applied to the maximum benefits allowable in a benefit year.”] [Eff 04/01/10;  
R ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**9. Section 17-1722.3-18, Hawaii Administrative Rules, is amended by adding subsection (j) to read as follows:**

“§17-1722.3-18 Basic Health Hawaii benefits.

\*\*\*

“(j) The Basic Health Hawaii benefits defined in this section are based on a twelve-month period. Benefits shall be pro-rated for any period other than a twelve month period.”

[Eff 04/01/10; am ] (Auth: HRS §346-14) (Imp: HRS §346-14)

**10. Section 17-1725-10, Hawaii Administrative Rules, is amended to read as follows:**

- (B) The accounts in the trust were established with the assets of the disabled individual solely for the benefit of the individual by a parent, grandparent, legal guardian, or court; and
  - (C) The State will receive all amounts remaining in the disabled individual's account in the trust upon the death of the disabled individual up to an amount equal to the total medical assistance received by the individual;
- (7) The value of the food stamp payments under the Food Stamp Act of 1977 (7 U.S.C. §§2011-2027);
  - (8) The value of the U. S. Department of Agriculture donated foods (surplus commodities);
  - (9) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655);
  - (10) Payments distributed per capita to or held in trust for a member of any Indian tribe under 25 U.S.C. §§459-459e, 1179, 1261-1265, 1305, 1401-1407, and 1626 and Pub. L. No. 94-540. Effective October 17, 1975, pursuant to Pub. L. No. 94-114, §6 (89 Stat. 577, 25 U.S.C. §459e) receipts distributed to members of certain Indian tribes which are referred to in Pub. L. No. 94-114, §5 (89 Stat. 577, 25 U.S.C. 459d);
  - (11) Certain Indian judgment funds, as provided under Pub. L. No. 83-134, §7 and amended by Pub. L. No. 458, §4 (25 U.S.C. §1407), including those funds:
    - (A) Held in trust by the Secretary of the Interior (including interest and investment income accrued while such funds are so held in trust); or
    - (B) Distributed per capita to a household or member of an Indian tribe in accordance with a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress; and

- a Native Corporation as a dividend or distribution of stock; and
- (E) An interest in a settlement trust;
- (15) Payments made to volunteers under the Domestic Volunteer Service Act of 1973 (Volunteers In Service to America (VISTA), student volunteers enrolled in institutions of higher education who participate in the University Year for Action (UYA) program, foster grandparents, senior health aides, senior companions) (42 U.S.C. §§4951-5085) and under the Small Business Act (Service Corps of Retired Executives (SCORE), and Active Corps of Executives (ACE)) (15 U.S.C. §637);
- (16) Value of free school lunches, provided under the Child Nutrition Act of 1966 and the National School Lunch program (42 U.S.C. §§1771-1789);
- (17) Any meals provided to senior citizens, such as congregate meals, or home delivered meals funded by the Older Americans Act of 1965 (42 U.S.C. §§3001-3057);
- (18) Pursuant to Pub. L. No. 94-114, §6 (89 Stat. 577, 25 U.S.C. §459e) receipts distributed to members of certain Indian tribes which are referred to in Pub. L. No. 94-114, §5 (89 Stat. 577, 25 U.S.C. §459d);
- (19) Refunds of utility and rental deposits paid by the department;
- (20) Bonafide loans from any source including but not limited to educational loans, shall be exempt from consideration in the individual's or family's personal reserve. A bonafide loan is a debt that the borrower has an obligation to repay;
- (21) Cash payments to the assistance unit responsible for household bills by a non-unit household member for his or her share of common household expenses;
- (22) Restitution payments provided under the Civil Liberties Act of 1988, Title I of Pub. L. No. 100-383, and the Aleutian and Pribilof Islands Restitution Act, Title II of Pub. L. No. 100-383;
- (23) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in

- (32) Unspent portions of any retroactive RSDI or SSI benefits retained in the form of cash or deposited into a bank account is exempt for a period of six calendar months following the month of receipt;
- (33) Unspent portions of any VA payments received by or on behalf of certain Vietnam veteran's natural children for any disability resulting from spina bifida under Pub. L. 104-204 is exempt except for any interest that is earned on the unspent portion;
- (34) Pursuant to Title IV, section 4735 of the Balance Budget Act of 1997 (Pub. L. No. 105-369), payments received from the Ricky Ray Hemophilia Relief Fund Act of 1998 (the Ricky Ray Act) to compensate individuals who contracted the H.I.V. from contaminated blood products; and
- (35) Funds used to purchase an annuity that is irrevocable and not assignable.
  - (A) An annuity is irrevocable when the annuitant cannot void the contract and obtain the cash value of the annuity less early withdrawals and surrender fees.
  - (B) An annuity is not assignable when the annuitant cannot sell the annuity on the open market." [Eff 08/01/94; am 11/13/95; am 01/29/96; am 03/30/96; am 11/25/96; am 05/02/98; am 06/19/00; am 05/10/03; am 10/19/09; am ] (Auth: HRS §346-53) (Imp: HRS §346-29; 20 C.F.R. 16.1201, 42 C.F.R. §431.10; 45 C.F.R. §233.20)

**11. Section 17-1725-17, Hawaii Administrative Rules, is amended by amending subsection (d) and (e) to read as follows:**

\*\*\*

"(d) In the case of a revocable trust the following apply:

- (1) The corpus of the trust is considered an available asset;
- (2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual; and

medical care, surgery, psychiatric care, and substance abuse treatment;

- (2) Intensive care room and board and general nursing care for medical care and surgery;
- (3) Use of an operating room and related facilities, inpatient anesthesia, radiology, laboratory and other diagnostic services agreed upon by the plan medical director for medical care and surgery;
- (4) Drugs, dressings, blood derivatives and their administration, general medical supplies, and diagnostic and therapeutic procedures as prescribed by the attending physician; and
- (5) Other ancillary services associated with hospital care except private duty nursing.

(b) Within a benefit period, a participating health plan shall be required to provide the following medical necessary outpatient services for each individual:

- (1) Bona fide emergency services. Coverage shall be provided for bona fide emergency services including ground and air (fixed wing and rotor) ambulance for emergency transportation, emergency room services, and physician services in conjunction with the emergency room visits. Bona fide emergency room visits shall be restricted to those requiring services for medical conditions manifesting themselves in acute symptoms of such severity that the absence of medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, or serious impairment of bodily functions, or serious dysfunction of any body organ part.
- (2) [Coverage of medically necessary outpatient] Outpatient hospital procedures or ambulatory surgical center procedures [may be subject to prior authorization and are included in the covered medical visits per benefit period].
- (3) Diagnostic testing, including laboratory and x-ray[, directly related to a covered outpatient visit].
- (4) Pregnancy-related services.



- (19) Rehabilitation services including physical and occupational therapy, audiology and speech language pathology shall be provided.
- (20) Coverage shall be provided for durable medical equipment, prosthetic devices, orthotics and medical supplies." [Eff 06/25/12; am ] (Auth: HRS §346-14) (Imp: HRS §346-14; 42 C.F.R. §430.25)

**13. Section 17-1727-48.2, Hawaii Administrative Rules, is amended to read as follows:**

"§17-1727-48.2 QUEST-Keiki benefits package.

- (a) For an individual under age twenty-one years, each participating health plan shall provide the [QUEST] benefits package as described in 17-1727-48.1.
- (b) For an individual under age twenty-one years who requires benefits for which either, coverage has been exhausted or not described under section 17-1727-48.1, each participating health plan shall provide medically necessary services to be in compliance with Early and Periodic Screening, Diagnosis, and Treatment requirements. [Benefits shall include but not be limited to coverage of:
  - (1) Durable medical equipment and medical supplies.
  - (2) Rehabilitation services such as physical and occupational therapy, audiology and speech-language pathology.
  - (3) Vision and hearing services to include visual aids prescribed by ophthalmologists and optometrists to include eyeglasses. New lenses are limited to once in a twelve (12) month period. Replacement glasses or new glasses with significant changes in prescription are covered within the benefit period. Contact lenses are not covered for cosmetic reasons. Hearing devices are covered for both analog and digital models.

direct accounts for drugs purchased from the wholesaler's supplier. Generally, it is the price put by the manufacturer of drug before any rebates, discounts, allowances or other price concessions are offered by the supplier of the product."

**16. Section 17-1739.1-2, Hawaii Administrative Rules, is amended by deleting the definition of "Estimated acquisition cost for a drug product"**

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[""Estimated acquisition cost for a drug product" means one of the following which shall be designated by the department:

- (1) The average wholesale price minus 10.5 per cent; or
- (2) The manufacturer's direct price. Average wholesale price shall be derived from the most commonly used package size listed in the Blue Book or the department's best estimate of the price generally and currently paid by providers for a drug labeler in the package size most frequently purchased by providers."]

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[Eff 10/26/01; am 05/10/03; am 03/11/04;  
am ] (Auth: HRS §346-14; 42 C.F.R.  
§431.10) (Imp: HRS §§346-14, 346-59; 42 C.F.R.  
§431.10; 42 U.S.C. §1396r(8)(d)(4) and (5))

**17. Section 17-1739.1-11, Hawaii Administrative Rules, is amended to read as follows:**

"§17-1739.1-11 Payment for drugs and related supplies. (a) The state medical assistance program shall determine [allowances] reimbursement for [prescribed] the ingredient cost of prescription drugs using the following criteria:

- (1) Single source drugs shall not exceed the lower of:
  - (A) The [billed charge] provider's invoice price;
  - (B) The provider's usual and customary charge to the general public; or

- (5) Payments for medical supplies shall be the lower of:
  - (A) The rate set by the department;
  - (B) The estimated acquisition cost (EAC) for a medical supply plus a reasonable dispensing fee; or
  - (C) Medicare's upper limit of payment;
- (6) The state medical assistance program requires that the lower cost equivalent drug product be dispensed if available in the marketplace and substitution is not prohibited by part VI, drug product selection of chapter 328, HRS. The recipient may refuse lower cost drug products but must pay the entire cost of the higher price equivalent;
- (7) The federal upper limit price or the state maximum allowable cost shall not apply if the practitioner:
  - (A) Certifies in his or her own handwriting that a specific brand is medically necessary for a particular recipient. A checkoff box is not acceptable but a notation of "brand medically necessary" or "do not substitute" is allowable;
  - (B) Obtains medical authorization for medical necessity from the state medical assistance program for specific brands of medications designated by the program. In such cases, the payment shall not exceed the lower of:
    - (i) The billed charge;
    - (ii) The provider's usual and customary charge to the general public; or
    - (iii) The estimated acquisition cost for a drug product plus a reasonable dispensing fee;
- (8) Reimbursement for over-the-counter drugs shall be limited to the over-the-counter drug prescribed by the licensed practitioner and specifically designated by the medical assistance program. Over-the-counter drugs not specifically designated shall require medical authorization for medical necessity by the medical assistance program;
- (9) The state Medicaid agency shall set the dispensing fee by taking into account the results of surveys of the cost of pharmacy

"brand medically necessary" or "do not substitute" is allowable; and

(B) Obtains prior authorization for medical necessity from the state medical assistance program. In such cases, the payment shall be according to the methodology in this section.

(4) The State medical assistance program requires that the lower cost equivalent drug product be dispensed if available in the marketplace and substitution is not prohibited by part VI of chapter 328, Hawaii Revised Statutes, relating to drug product selection. The recipient may refuse lower cost drug products but must pay the entire cost of the higher price equivalent.

(5) If a published WAC is unavailable for the medication and the provider does not submit documentation of the invoice price, then the medication and dispensing fee shall not be reimbursed.

[(b) The following conditions shall apply to payment for drugs dispensed by physicians and dentists from the physicians' and dentists' offices:

(1) Physicians and dentists dispensing medications from the physicians' and dentists' offices shall be reimbursed at the estimated acquisition cost plus 50 cents; and

(3) If there is no pharmacy within five miles of the provider's office, special consideration for payment at the pharmacy rate may be made upon written request to the department's Med-QUEST administrator for approval.]

(b) The dispensing fee for prescription medications dispensed by a licensed pharmacy shall be:

(1) \$5.00 (five and no/100 dollars) per prescription.

(2) The dispensing fee for any maintenance or chronic medication shall be extended only once per thirty (30) days without medical authorization from the medical assistance program. Other appropriate limits regarding the number of dispensing fees paid per interval of time shall be determined as necessary by the medical assistance program.

(c) The Department may cover selected over-the-counter medications.

(B) All other services shall be handled during the pharmacist's routine visits whenever possible.

(g) Payments for medical supplies shall be the lower of:

(1) The rate set by the department;

(2) Medicare's upper limit of payment; or

(3) The EAC for a medical supply." [Eff

10/26/01; am 05/10/03; am 05/05/05;

am ] (Auth: HRS §346-59) (Imp:

42 C.F.R. §§447.331, 447.332, 447.333)

**18. Section 17-1739.1-12, Hawaii Administrative Rules, is repealed:**

["§17-1739.1-12 Advisory estimated acquisition cost committee.

(a) An advisory estimated acquisition cost committee shall be appointed by the director of the department, and shall consist of:

(1) One of the department's medical consultants;

(2) The department's pharmacy consultant who shall serve as chairperson;

(3) One practicing physician from the community;

(4) Three practicing pharmacists;

(5) Two members from either the pharmaceutical wholesale or manufacturing industry; and

(6) One lay person.

(b) The term of each committee member shall be two years and overlapped in such a way that expiration of terms do not cause a total membership change.

(c) A quorum shall consist of a simple majority of the total number of members.

(d) The duties of the advisory estimated acquisition cost committee shall be to:

(1) Meet semi-annually or when called by the chairperson;

(2) Review available data and advise the department of maximum estimated acquisition costs that should be paid for specific drug products that:

(A) Are available from multiple sources;

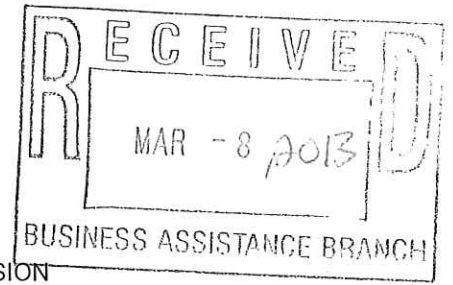
(B) Represent significant program expenditures;

(C) Could result in significant program savings; and

V. New Business

- A. Proposed Amendments for Kauai County  
Code Chapter 10 Section A, Lihue Town  
Core Urban Design District (County of Kauai  
– Planning Department)

SMALL BUSINESS IMPACT STATEMENT  
(SEC 201M-2, HRS)



DEPARTMENT OR AGENCY: COUNTY OF KAUAI PLANNING COMMISSION

Relevant HRS Chapter or Section: HRS CHAPTER 91

Administrative Rule Chapter and Title: County of Kauai Department of Planning  
Rules for the Lihu'e Town Core Urban Design District

Name: Michael A. Dahilig/Ian K. Jung/Marie Williams

Title: Director of Planning/Deputy County Attorney/Planner

Phone Number: 808-241-4067

Email Address: mdahilig@kauai.gov/ijung@kauai.gov/mwilliams@kauai.gov

A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:

B. RULE DESCRIPTION:

1.  New     Repeal     Amendment     Recompilation

2. Nature of Proposed Change

a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?  Yes  No

b. Is the proposed rule an emergency regulation?  Yes  No

c. Will the proposed rule affect small business because it:  
1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees?  Yes  No

2) Will cause a direct and significant economic burden upon a small business?  Yes  No

3) Is directly related to the formation, operation, or expansion of a small business?  Yes  No

3. Summarize the proposed rule(s) and reasons for the proposed rule(s):

New construction and the repainting of existing buildings in the Līhu'e Town Core SPAs will be required to comply with the Color Palette. The draft rules also establish a process for applicants who wish to propose specific exterior building colors that are not substantially similar to the Color Palette.

**C. Small Business Impact Statement pursuant to 201M-2(b):**

The proposed rules will provide small businesses located in the Līhu'e Town Core with clear guidance as to what is permissible in the Līhu'e Town Core SPAs. In all instances where the Planning Department has enforced the exterior building color requirement, applicants have requested specific guidance regarding the definition of "earth tone" as it pertains the Līhu'e Town Core. By approving a Color Palette and creating a process for proposing alternative building colors, the Planning Department can better fulfill the intent of the LTCUDP to ensure that new development is not only harmonious with existing development but enhances the visual character of the area, thus contributing to the revitalization of the Līhu'e Town Core. This will be advantageous to small businesses located there.

**D. Are there new or increased fees or fines? \_\_\_Yes  No**

N/A

**E. Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule?  Yes \_\_\_ No**  
If no, why not?

The Planning Department consulted with the "Līhu'e Tomorrow" Committee, whose members include small business owners. "Līhu'e Tomorrow" is a committee of the Līhu'e Business Association and their purpose is to engage community members and stakeholders in Līhu'e's immediate and long-range planning.

**F. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.**

N/A

**G. Departmental Impact (i.e. fiscal, personnel, program)?**  
 Yes \_\_\_ No

The Department will experience greater efficiencies in administering the Līhu'e Town Core Special Planning Areas.

**H. Impact on General Public (i.e. individuals, consumers, and large businesses)?**  
 Yes \_\_\_ No



**County of Kaua'i Department of Planning  
Rules for the Līhu'e Town Core Urban Design District**

**1-1. Purpose.**

Pursuant to Chapter 10, Article 5A, Kaua'i County Code 1987, as Amended, these rules define the Department of Planning's statutory requirement to preserve, maintain and restore the appearance and design Līhu'e Town Core Urban Design District.

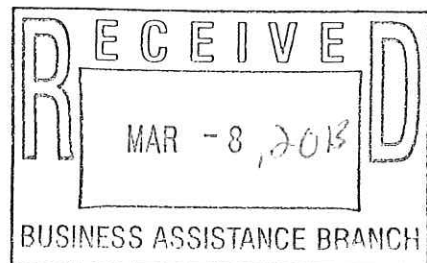
**1-2. Authority.**

These rules are authorized under Hawai'i Revised Statute Chapter 91, Kaua'i County Charter Section 14.03.E. and incorporated by Kaua'i County Code, 1987 as Amended, Chapter 10 and Chapter 8, Article 3, which allows the Planning Director to enforce the requirements set forth in the Līhu'e Town Core Urban Design District.

**1-3. Definitions.**

In addition to terms defined in Chapter 10, Article 5A, Kaua'i County Code 1987, as Amended:

- (a) "Color Palette" means an array of "Dark Earth Tones", "Light Earth Tones" and "Warm Earth Tones", and "Earth Tones" and other colors commonly found in the Līhu'e Town Core as approved by the Planning Director.
- (b) "Dark Earth Tones" means colors that are of a darker shade that draw from a palette of browns, tans, greys, greens and some reds, and are muted and flat in emulation of the natural colors found in dirt, rocks and vegetation.
- (c) "Earth Tones" means colors that draw from a palette of browns, tans, greys, greens and some reds, and are muted and flat in emulation of the natural colors found in dirt, rocks and vegetation.
- (d) "Light Earth Tones" means colors that are of a lighter shade that draw from a palette of browns, tans, greys, greens and some reds, and are muted and flat in emulation of the natural colors found in dirt, rocks and vegetation.
- (e) "Planning Director" means the Director of the Planning Department of the County of Kaua'i.
- (f) "Reflective" means colors or glass/metallic surfaces that are capable of reflecting light.
- (g) "Special Planning Areas D, E, F, and G" means Special Planning Areas authorized under Kauai County Code, 1987 as Amended, Chapter 8, Article 11 and established by the Līhu'e Town Core Urban Design District in Chapter 10, Article 5A.
- (h) "Warm Earth Tones" means colors that have a red or yellow undertone and draw from a palette of browns, tans, greys, greens and some reds, and emulate the natural colors found in dirt, rocks and vegetation.



V. New Business

B. Proposed HAR Title 18 Chapter 231  
Administration of Taxes (Department of  
Taxes)

**"SMALL BUSINESS IMPACT STATEMENT"**

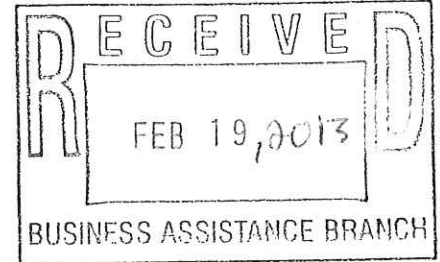
**DEPARTMENT OR AGENCY:**

Department of Taxation (Department)

**Chapter and Title:**

HRS Chapter 231, Administration of Taxes

HAR Chapter 18-231, Administration of Taxes



**Name and Phone Number of Contact Person:**

Ted Shiraishi, Administrative Rules Officer, 587-1569

Jacob Herlitz, Administrative Rules Specialist, Jacob.L.Herlitz@hawaii.gov

**A. Description:**

XX New rule(s)    \_\_\_ Repeal of Rule    \_\_\_ Amendment to rule(s)

**B. Provide the following information described in Items 1-7 of the Policy Section in the Governor's *Administrative Directive No. 09-01*:**

**1. Exact Changes and Reasons for Changes**

On July 1, 2011, the Department, adopted temporary administrative rules, relating to Cash Economy Enforcement. Under HRS section 231-10.7, temporary administrative rules are valid for 18 months after the rules become effective. The department is currently working to make the temporary rules permanent.

After having considered the informal comments offered by the public the Department is considering adopting two changes to the July 1, 2011 set of temporary rules when it makes the rules permanent. The first of these revisions includes clarification for the process of issuing a cease and desist citation for failure to keep and produce adequate books and records. The revision states the circumstances when SES agents may give additional time to produce books and records. This revision is being proposed to create a procedure for circumstances where books and records are not on the immediate premises and more time is needed to produce them.

The other revision is for the issuance of a cease and desist citation for failure to record transaction. The new section removes the abatement section of the law and clarifies when the fine is commensurate with the violation. This change is being proposed to bring the rules language of this section more in line with the language of the statute.

All other portions of the proposed final rules are the same as the Temporary Administrative Rules adopted in July 2011.

## **2. Prior Small Business Impact Statement as reported to Small Business Regulatory Review Board in 2011.**

Other than the changes described above, the final rules the Department is proposing are the same as the Temporary Administrative Rules adopted in July 2011. For your reference, the block quote below is from the Small Business Impact Statement the Department sent to you when it adopted those Temporary Rules, all of which is still relevant with the exception of the changes discussed above:

Act 134, Session Laws of Hawai'i 2009, also known as the "Cash Economy Enforcement Act," (Act 134) amended Title 14, Hawai'i Revised Statutes (HRS), by implementing the Special Enforcement Section (SES) within the Department of Taxation to investigate and enforce the tax laws with an emphasis on the "cash economy." Act 134 provided the Department with additional resources and tools to ensure that all sectors of Hawai'i's economy are paying their fair share of taxes.

The Special Enforcement Section (SES) civilly investigates reported or suspected violations of tax laws, with a special emphasis on cash-based businesses. Act 134 authorized the SES to enforce certain aspects of Hawai'i's cash economy through the use of cease and desist citations. These citations may also carry a monetary fine, as follows:

- A fine for failing to produce upon demand by the SES any license or permit required under title 14. The fine may not exceed \$1,000 for cash-based businesses, and may not exceed \$500 for all other persons.
- A fine for failing to keep adequate books or records and producing these books and records upon demand of the SES, if

those books or records must be kept pursuant to a provision of title 14. The fine may not exceed \$2,000 for cash-based businesses, and may not exceed \$1,000 for all other persons.

- A fine for conducting more than 10 taxable business transactions per day in cash and failing to offer a receipt or other record of the transaction and failing to maintain a contemporaneously generated record of all business transactions conducted each day. The fine may not exceed \$2,000 for cash-based businesses, and may not exceed \$1,000 for all other persons.
- A fine for selling, offering to sell, or otherwise conveying more than one price for any business to be transacted when the lower price is offered if the transaction is paid for in cash, unless there is a legitimate business purpose for the separate prices. The fine may not exceed \$3,000 for cash-based businesses, and may not exceed \$2,000 for all other persons.
- A fine for any person intentionally interfering with, hindering, obstructing, preventing, or impeding any investigator, auditor, collector, or other employee of the department from obtaining license information, books, records, articles, or item of business transacted, or other information or property rightfully entitled to the department. The fine may not exceed \$2,000. A showing of good cause is an absolute defense to this fine.
- A fine for any person who receives gross income from business conducted in the state without first obtaining a license under chapter 237. The fine may not exceed \$2,000 for cash-based businesses, and may not exceed \$500 for all other persons. The director may waive this fine upon a showing of good cause.

Although Act 134 also provided that a fine may be imposed against a person engaging in business in this state for possessing currency (in the form of coin or note) for tax avoidance purposes, the Department has determined that it is difficult, if not impossible, to establish criteria for when possession of currency is for tax avoidance purposes, and accordingly, the Department has elected not to promulgate rules concerning this possible violation at this time. As such, no citation may be issued by the SES for such an alleged violation.

A cease and desist citation issued by the SES is similar to a civil infraction issuable by the police in a traffic stop. The matter is not

criminal although a fine may be imposed. These rules set for the standards for when such citations may be issued and a fine imposed and provides a cited person with necessary due process and other constitutionally mandated rights by way of a contested case hearing before the Department.

These proposed administrative rules include the following procedural due process rights—

- Clarifying that a cease and desist citation is a civil matter and is not a tax.
- Establishes the requirements for issuance of a cease and desist citation, including allowable means of service of the citation.
- Provides the requirements for a valid citation, including the identity of the person cited, location of the incident, certification of the alleged violation by an authorized person, and whether the cited person is a "cash-based business," which results in higher penalties. In addition, information such as how to contest the citation and any applicable appeal rights is provided.
- Establishes the proper venue for any hearing, and provides for participation telephonically.
- Sets forth the manner and the time deadlines by which a cited person must respond, and the results of failing to respond.
- Provides that a cited person may appear in person or by a representative.
- Sets forth the time frame in which the hearing must be set, and provides for notices and filing of documents by US mail, hand delivery, facsimile transmission, or electronically.
- Establishes the duties and powers of the presiding officer at the hearing, including conflict provisions whereby the presiding officer must recuse himself.
- Sets forth the procedures for a contested case hearing, which is intended to be informal, establishes the burden of proof, and the conduct of the hearing generally.
- Provides that the presiding officer shall make a recommended decision to the director and sets forth the remedies available to any aggrieved party, including the right to appeal to the circuit

court, and establishes a stay of any order pending the outcome of the appeal.

- Establishes how time periods are to be calculated and the effect of Saturdays, Sundays, legal holidays, and government furlough days.
- Provides that documents may be printed, sent electronically, or by facsimile transmission and establishes the requirements of any filing, including the number of copies required.
- Sets forth allowable evidence to be admitted.
- Sets forth the specific acts for which a fine may be imposed, the amount of the fine, and acceptable methods of satisfying the requirements of the statute.
- Provides that no fine may be imposed unless the person has previously been contacted by the SES.

## 2. Nature of Proposed Changes.

- a. **Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?**

Yes     No

- b. **Is the proposed rule an emergency regulation?**

Yes     No

- c. **Will the proposed rule affect small business because it:**

- 1) **will apply to a for-profit enterprise consisting of fewer than 200 full-time or part-time employees?**

Yes     No

- 2) **will cause a direct and significant economic burden upon a small business?**

Yes     No

- 3) **is directly related to the formation, operation, or expansion of a small business?**

Yes     No

**Provide the information requested in only Items 3-7 (Skip items 8-11):**

- **If you answered YES to either Item 2.a. or Item 2.b.; or**
- **If you answered NO to Item 2.c. 1); or**
- **If you answered YES to Item 2.c. 1) and NO to both Item 2.c. 2) and Item 2.c. 3).**

NOTE: Although the Department answered YES to Item 2.c. 1 and NO to both Item 2.c. 2 and Item 2.c. 3, the Department has answered items 8-11 to better inform the SBRRB concerning the impact of these rules on small businesses.

- 3. Departmental Impact (i.e. fiscal, personnel, program)?**  
XX Yes \_\_\_ No (If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.)

As the Department is charged with administering Hawai'i tax laws, the Department does not believe that it will be impacted by these proposed administrative rules, as current resources are sufficient such that there will be no adverse impact on the Department's operations, and part of its mission is to ensure compliance with the tax law by all.

- 4. Impact on General Public (i.e. individuals, consumers, and businesses)?**  
XX Yes \_\_\_ No (If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.)

The general public may be impacted by these proposed administrative rules as it seeks to bring all businesses into tax compliance. Non-compliant businesses currently have an advantage over tax compliant businesses as they are able to charge a lower price for goods and services than a tax compliant business because the non-compliant business lowers its costs by not paying taxes. Consumers may see a slight increase in the price of goods and services as these businesses come into tax compliance. However, as higher tax compliance leads to higher general



revenues overall, the general public will benefit as services can be increased or taxes lowered.

**5. Impact on state economy?**

Yes  No (If yes, describe long and short-range impacts.)

The Department anticipates that the economy will benefit both in the long term and short term. In particular, the advantage that non-tax compliant businesses have because they do not pay required taxes should lessen dramatically and allow all businesses to fairly compete in the marketplace on an equal footing. The Department believes that it will stimulate growth for business as non-compliant businesses cease operations or become tax compliant and will lead to more jobs and greater tax revenue overall.

**6. Final result anticipated from the proposed rule change.**

The Department anticipates that as non-tax compliant businesses become aware that the Department is aggressively seeking to enforce compliance of tax laws by all businesses, more and more businesses will voluntarily become tax compliant rather than risking the imposition of fines. This will result in higher revenues to the State, enabling greater services to be provided or allow tax rates to be decreased.

**7. Other alternatives explored to carry out the statutory purpose other than rulemaking.**

The Department of Taxation adopted temporary rules in July 2011. Those rules constitute the basis for the rules the Department is currently proposing, and experience enforcing the Temporary Rules in the field is the basis for the differences between those Temporary Rules and these proposed final rules.

The cash economy is one of the most difficult areas of non-compliance with tax law to satisfactorily address. Current estimates are that some \$9,000 per person in Hawai'i is lost in income taxes alone annually due to this tax non-compliance. The Department believes that only an aggressive program of targeting and assessing fines against these non-compliant businesses will cause a change in the attitudes of the business owners regarding not paying taxes for which they are already legally responsible, and which most businesses do pay.

**8. Is there a new or increased fee or fine?**

**Yes.** The enabling statutes provide that a fine may be imposed up to specified limits depending on whether the business is a cash based business or not. These administrative rules establish the amount of the fine to be imposed and the circumstances under which the fine may be imposed, as well as conduct under which the fine will not be imposed.

XX Yes \_\_\_ No **If yes, provide the following information:**

**a. Amount of the current fee or fine and last time it was increased.**

No fine is currently imposed.

**b. Amount of the proposed fee or fine and percentage increase.**

- Fine for failing to produce license or permit required under title 14: Up to \$1,000 for a cash-based businesses and up to \$500 for all others. No fine was previously imposed.
- Fine for failure to keep adequate books and records and failing to produce them upon demand: Up to \$2,000 for cash-based businesses and up to \$1,000 for all others. No fine was previously imposed.
- Fine for conducting more than 10 taxable business transactions per day in cash and failing to offer a receipt or other record of the transaction and failing to maintain a contemporaneously generated record of all transactions conducted each day: Up to \$2,000 for cash-based businesses and up to \$1,000 for all others. No fine was previously imposed.
- Fine for selling, offering to sell, or otherwise conveying more than one price for any business to be transacted when the lower price is offered if the transaction is paid for in cash without a legitimate business purpose: Up to \$3,000 for cash-based businesses and up to \$2,000 for all others. No fine was previously imposed.
- Fine for interference with a tax official: Up to \$2,000. No fine

was previously imposed.

**c. Reason for new or increased fee or fine.**

The fines are authorized by statute to foster increased compliance with the tax statutes by all businesses.

**d. Administrative cost to implement or enforce the proposed rule.**

The Department does not anticipate increased costs in its operating budget as it is using existing resources to implement the program and the program is part of the Department's ongoing mission of ensuring compliance with the tax laws by all.

**e. Amount agency expects to collect annually from change in fee or fine.**

Unknown at this time. The Department believes that the overall amount raised will be minimal but that the boost in tax compliance by all will substantially increase as the efforts of the Department to enforce the tax laws by all businesses becomes generally known.

**f. Will fee revert to general fund? If not, specify where and how monies will be allocated.**

Any fines that are collected (by statute) are used to fund the SES and are deposited into the Tax Administration Special Fund. Any increase in overall tax collections goes to the general fund.

**g. Criteria used to determine amount of fee or fine. (Example: cost of specific service, general overhead or overall program cost, or no relationship to cost).**

Since the fines are intended to be a deterrent to failing to comply with existing tax laws, the fines are essentially set at the maximum amount authorized by statute. No fines, however, will be imposed unless a person has at least once before been contacted by the Department concerning the need of the business to comply with all tax laws.

9. Will the proposed rule affect small business?

XX Yes \_\_\_ No If yes, provide the following information:

- a. Describe the type(s) of small business that will be directly or adversely affected by, bear the costs of, or directly benefit from the proposed rule.

The rules apply to all businesses, and will impact a business only if it is not in compliance with the tax laws of this State. Existing law already mandates that all businesses, large and small, comply with various tax provisions, such as the need to be licensed, the need to maintain adequate books and records, and the need to pay taxes that are legally due. These proposed rules affect only those businesses that are not in compliance with tax laws that already currently exist, and are intended to increase compliance with the existing tax laws. While the Department acknowledges that small business owners are generally hard working and honest, this does not excuse any person from complying with the tax law.

Businesses that are in tax compliance – large and small – will not be affected by these rules. The rules are intended to bring non-compliant businesses into compliance by making them fully aware of the requirements of tax law and letting businesses know that the Department is enforcing the tax law without regards to the size of the business.

- b. Description of any increase in direct costs, in estimated dollar amounts, to small business, such as fees or fines, or other direct costs associated with compliance.

Direct costs are expected to be nominal, and are in any event required under existing law. For example, a business license for selling at retail or wholesale is \$20. Sellers are expected to pay the required general excise tax on all sales made within the State at the rates established by statute. These tax statutes apply to all businesses, large and small, and are simply part of the cost of doing business. The cost to a small business is no more than what the law already requires of them.

- c. Description of any increase in indirect costs, in estimated dollar amounts, to small business, such as reporting, record keeping, equipment, construction, labor, professional

**services, revenue loss or other costs associated with compliance.**

There are no additional indirect costs that would be incurred if a business were in full tax compliance. Both federal and State tax laws require all businesses to keep accurate records of both revenue and expenses, and to pay any taxes that may be due as a result of operations.

**d. Description of how small business was involved in the development of the proposed rules.**

The Department has considered the complaints of businesses that came about after the first set of proposed rules were promulgated. In particular, the Department has determined at this time not to pursue fines for the possession of currency if for tax avoidance purposes even though such a fine is authorized by statute because of the difficulty in setting standards for when a fine should be imposed. The rules also provide substantive guidance for businesses so that they are ensured that they are in tax compliance. Finally, no person shall be cited unless the SES has previously contacted the person about the tax laws.

**e. Methods considered or used to reduce the impact on small business such as:**

**Simplification,  
Consolidation,  
Varying schedule for fees or fines,  
Modified compliance or reporting requirements, or  
Other alternative or less stringent measures proposed by  
affected businesses and, if proposed, why those proposals  
were not adopted.**

These rules simply seek to enforce tax compliance by all. These requirements and rules apply to all businesses, both large and small. The Department will listen to any concerns that the public may have, and may modify the rules if justification exists for such modification.

- f. If the proposed rule is more stringent than those mandated by governing federal or state law or statute, explain how and why the proposed rule is more stringent.**

Not applicable. Current law already mandates that all businesses comply with the requirements of the tax code, whether federal or state. These rules only propose to enforce requirements already set by the tax code.

## Special Enforcement Section

Created July 2009  
Act 134  
HRS §231-81 – §231-100

## Special Enforcement Section Mission

To ensure that all sectors of Hawaii's economy, especially those that transact business in cash, pay their fair share of taxes; and to prevent, through enforcement and deterrence, the shortchanging of those that comply with Hawaii tax laws.

## Special Enforcement Section

- Created in July 2009
- September 2010 four investigators and a supervisor were hired
- Early 2011 refocused to education with the public
- Current Fiscal Year (July 1, 2012 – June 30, 2013) unit has only three investigators
- Department working to get unit to full staff

## Cash-Based

- "Cash-based transactions are a fundamental part of any economy. As the oldest form of payment, cash continues to dominate many facets of the local economy. Cash is inherently private, efficient, and predictable for both purchaser and seller. However, cash transactions are also the simplest means of underreporting or non-reporting for tax purposes."

## Special Enforcement Section Focus

- The Special Enforcement Section believes that it is important that all business owners, small and large, pay their fair share of taxes.
- The Special Enforcement Section is trying to level the "playing field" for all business owners.
- When business owners do not pay their taxes they can charge less for the same goods and services as other businesses paying taxes.

## Special Enforcement Section Focus

- Two ways to do this:
  - Education of businesses through in-person contact, and
  - Compliance through investigation of businesses.

## Education

- Site visits to over 2,500 vendors
- Starting in April 2011 each vendor was given an acknowledgement form
- Acknowledgement form gives a short explanation of the laws enforced by SES and the fines that can occur
- The acknowledgment forms are available in seven different languages:
  - English, Chinese, Ilokano, Korean, Tagalog, Thai and Vietnamese

## Citations

- A citation can be issued when a taxpayer has violated any citable offense.
- For all citations, except Interference with a Tax Official, prior contact must have been made with the taxpayer/vendor.
- The acknowledgement form given out by SES is proof of prior explanation of tax laws and citations.

## Special Enforcement Section

- The current Hawaii Administrative Rules were drafted in 2011. The rules have been in place and have been effective. In the past public concerns were taken into account and statutes and rules were changed to include public opinion.
- There have been two revisions to:
  - §18-231-95-01T – Fine for failure to keep adequate books and records.
  - §18-231-96-01T – Fine for failure to record transaction.

## Fine for Failure to Keep Adequate Books and Records

- A person shall not be required to keep books and records in any particular format, provided that the books and records fairly reflect the financial matters of the business, including (but not limited to) the revenue and expenses of the business.
- SES shall demand the production of books and record in writing. This section was added to clarify a situation where the books and records are not present at the location.

## Fine for Failure to Keep Adequate Books and Records

- The writing shall state:
  - An appointment must be made within 14 days of the visit.
  - What period of books and records the person must produce.
- At the time of the written request a citation will be issued and will stand if the books and records are not produced within the 14 days.
- Only one citation may be issued in any thirty day period.

## Failure to Record Transaction

- Required to OFFER a receipt or other record of the transaction. The old statute read GIVE.
- For this section, a prominently displayed sign in the immediate vicinity of where the goods and/or services are paid for noting that a receipt will be given upon request shall suffice to satisfy such notice requirement, provided that such sign is clearly legible and visible.



## Failure to Record Transaction

- Several methods to satisfy the requirements of this section:
  - Cash register receipt, as long as, the register keeps track of daily sales
  - Computerized method, point of sale systems, etc.
  - Pre-numbered receipt book with at least an original and copy
  - Contemporaneous log maintained by the person setting forth a general description of the goods and/or services sold, as well as the total gross proceeds of each transaction

## Failure to Record Transaction

- Revisions to this section were to remove the abatement section previously included in the rules.
- The new section states:
  - If the person is otherwise in compliance with title 14 at the time a fine for violation of section 231-96 is issued, the fine shall be commensurate with the violation as follows:
    - For the first fine issued for a first offense under subsection (a)(1), the fine, or a portion thereof, may be waived; and
    - For second and subsequent fines offense under subsection (a)(2), such fines shall stand as issued.

## To Note:

- Possession of currency for tax avoidance purposes –
  - Because of the difficulty in ascertaining when possession of currency is for the purpose of tax avoidance, no rules are being promulgated at this time concerning this section and accordingly, no citation shall be issued for such violation. The department may in the future, subject to all applicable rules, promulgate rules concerning this section.

## Effect on Small Businesses

- These rules are intended to bring all business owners into compliance with the tax laws.
- When all taxpayers are in compliance there will be fair competition for all business owners.
- These proposed rules affect only those businesses that are not in compliance with tax laws that already currently exist, and are intended to increase compliance with the existing tax laws.
- In other words, businesses that are in tax compliance will not be affected by these rules.

## Contact SES/Complaints

- Automated Phone Messaging
  - (808) 587-1456
- Email
  - [Special.Enforcement.Tax.Section@hawaii.gov](mailto:Special.Enforcement.Tax.Section@hawaii.gov)
- Mail
  - Special Enforcement Section, Room 228  
Department of Taxation  
PO Box 259  
Honolulu, Hawaii 96809-0259

## Questions

- Please contact me at  
[Alicia.L.Burnham@hawaii.gov](mailto:Alicia.L.Burnham@hawaii.gov)



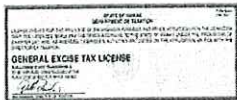
# Does your business involve "cash" transactions?

In July 2009, the Department of Taxation formed the Special Enforcement Section (SES). The highest priority of the SES is to ensure that all Hawaii taxpayers pay their fair share and to prevent the shortchanging of those who comply with Hawaii tax laws.

Hawaii law authorizes the SES to enforce Hawaii tax laws through the issuance of cease and desist citations, which can include substantial monetary fines.

Failure to:

A violation of this provision results in a fine not to exceed:



1. Produce license upon demand

1. \$500 for most persons  
\$1,000 for cash-based businesses

2. Obtain a GE license

2. \$500 for most persons  
\$2,000 for cash-based businesses



3. Keep adequate books and records

3. \$1,000 for most persons  
\$2,000 for cash-based businesses

4. Record transaction

4. \$1,000 for most persons  
\$2,000 for cash-based businesses

It is unlawful to conduct more than **10 taxable transactions per day in cash** and fail to:

- (1) Offer a receipt or other record of the transaction, and
- (2) Maintain a contemporaneously generated record of all business transactions conducted each day, whether hand written or generated by a manually operated or electronic cash register.

**Each day a person is in violation of this section shall be treated as a separate violation.**



5. Tax avoidance price fixing

5. \$2,000 for most persons  
\$3,000 for cash-based businesses

Persons who offer price differentials where the transaction is paid in cash may violate the offense of tax avoidance price fixing.

6. Possession of currency for tax avoidance purposes

6. \$2,000 for most persons  
\$3,000 for cash-based businesses

Where a person possesses cash for the purpose of avoiding taxes, the violation of possession of currency for tax avoidance purposes occurs.



7. Interference with a tax official

7. \$2,000



For more information, please visit [www.hawaii.gov/tax](http://www.hawaii.gov/tax)

Print Name \_\_\_\_\_

Signature and Date (mm/dd/yyyy) \_\_\_\_\_

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_



# 您的企業涉及現金交易嗎?

在 2009年7月, 夏威夷稅務局成立了特別執法部門 (Special Enforcement Section). 其最重要任務是確保所有夏威夷的納稅人遵守稅法, 公平納稅及防止逃稅.

夏威夷法律授權特別執法部門發出終止營業及停止營業告票, 及包括以重金罰款去執行夏威夷稅務條例.

## 沒有遵行以下條例:

## 違反條例最高罰款:



1. 查詢時不能提供普通消費稅牌照

1. \$500 一般納稅人  
\$1,000 現金交易商戶

2. 沒有申請及獲得普通消費稅牌照

2. \$500 一般納稅人  
\$2,000 現金交易商戶



3. 沒有保存足夠的帳簿和記錄

3. \$1,000 一般納稅人  
\$2,000 現金交易商戶

4. 沒有記錄交易

4. \$1,000 一般納稅人  
\$2,000 現金交易商戶

任何人每日進行超過十次以現金支付而需繳納稅的交易, 且沒有遵行以下條例已違法:

- (1) 提供收據或其他交易紀錄, 及
- (2) 保全每日進行所有的商業交易記錄, 不論是以手寫的記錄, 或是手動操作收銀機的記錄, 或是電子收銀機的記錄

如任何人重覆違法, 控告及罰款將會以每日計.

5. 更改定價避稅

5. \$2,000 一般納稅人  
\$3,000 現金交易商戶

任何人因以現金支付交易而提供差價可能已觸犯更改定價避稅條例.

6. 持有現金作避稅用途

6. \$2,000 一般納稅人  
\$3,000 現金交易商戶

任何人因為避稅而持有現金已觸犯持有現金作避稅用途條例.

7. 妨礙稅務員執行公務

7. \$2,000

詳細資料請瀏覽夏威夷稅務局網頁 [www.hawaii.gov/tax](http://www.hawaii.gov/tax) (所有條例的解釋及定義以英語原文為準)

Print Name \_\_\_\_\_

Signature and Date (mm/dd/yyyy) \_\_\_\_\_

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_



# Nairaman kadi ti "cash" iti pannakitransakyo iti negosyo?

Idi bulan ti Hulyo iti tawen 2009, nangbuangay ti Departamento ti Buwis (Department of Taxation) iti Special Enforcement Section (SES). Ti kangrunaan a prioridad ti SES ket mangiseguro nga amin nga agbaybayad iti buis iti Hawaii ket bayadanda ti maitutop nga buisda tapno maliklikan ti di-kinanainkalintegang kadagidiay sidadaan nga agtulnog kadagiti paglintegan ti buis iti Hawaii.

Iti linteg ti Hawaii autorisaranna ti SES nga mangienpuwersar ti paglintegan iti buis ti Hawaii babaen iti panang-isyu iti sitasyon a mangpasardeng, nga mabalin nga iramanna ti dakkel a multa ti kwarta.

## Liway nga:

### 1. Mangipakita ti lisensya apaman nga makalikagum



### 2. Mangala ti lisensya a General Excise (GE)



### 3. Maaddaan iti umdas nga libro ken record

### 4. Rekord ti transaksion

Saan nga naikalintegang nga mangikondukta iti **10 a mabuisan a transaksion kada aldaw babaen iti kwarta** ken liway nga (1) Mangipaay iti resibo wenno dadduma pay a nairekord a transaksion, ken (2) Mangmentenar iti maar-aramat a rekord kadagiti amin a transaksion iti negosyo a maikonkondukta iti kada aldaw, maisurat man dayta wenno babaen iti electronic cash register. **Iti kada aldaw nga ti maysa a tao ket salungasingenna daytoy a paset masapul nga matratar kas naisina a salungasing.**

### 5. Panangiyurnos iti presyo tapno maliklikani ti buwis

Asinoman nga mangiyoprisir iti naiduma nga presyo nga ditoy a nabayadan iti cash ti transaksion mabalin nga salungasingenna ti panangliklik iti buis panangiyurnos iti presyo.

### 6. Panangikut iti kwarta(currency) tapno maliklikan ti buis

No ti maysa a tao ket ik-ikutanna ti cash iti panggep nga mangliklik iti buis, maysa dayta a panagsalungasing iti panangikut iti kwarta(currency) tapno maliklikan ti buis.

### 7. Pannakisubang iti opisyal iti buis

## Ti panagsalungasing iti daytoy nga probision ket agresulta iti multa saan nga nasursurok ngem iti:

1. \$500 para iti kaaduan nga tattao  
\$1,000 para kadagiti negosyo nga cash ti panagbayad
2. \$500 para iti kaaduan nga tattao  
\$2,000 para kadagiti negosyo nga cash ti panagbayad
3. \$1,000 para iti kaaduan nga tattao  
\$2,000 para kadagiti negosyo nga cash ti panagbayad
4. \$1,000 para iti kaaduan nga tattao  
\$2,000 para kadagiti negosyo nga cash ti panagbayad
5. \$2,000 para iti kaaduan nga tattao  
\$3,000 para kadagiti negosyo nga cash ti panagbayad
6. \$2,000 para iti kaaduan nga tattao  
\$3,000 para kadagiti negosyo nga cash ti panagbayad
7. \$2,000

Para iti ad-adu pay nga impormasyon, pangaasiyo ta bisitaenyo ti [www.hawaii.gov/tax](http://www.hawaii.gov/tax)

Print Name (Iprinta ti Nagan) \_\_\_\_\_

Signature and Date (Pirma ken Petsa) (mm/dd/yyyy) \_\_\_\_\_

Business Name (Nagan ti Negosyo): \_\_\_\_\_

Address (Lugar): \_\_\_\_\_

Telephone Number (Numero ti telepono): \_\_\_\_\_



# 당신의 비즈니스는 현금 거래를 하고 있습니까?

2009년 7월, 하와이주 세무부에서는 특별 집행 부서 (Special Enforcement Section) (SES) 를 구성하였습니다. SES의 가장 우선 사항은 모든 하와이주 세납자들의 공정한 세납을 도모하고 하와이주 세무법을 준수하는 세납자들의 부족상태를 방지하기 위함입니다.

하와이주 법은 SES에게 상당량의 금전적 벌칙을 포함한 정지명령 발행을 집행할 수 있는 권한을 부여합니다.

다음 사항 (1~ 4)을 준수하지 않을 경우:



1. 해당 라이선스를 발급받는다



2. General Excise (GE) 라이선스를 발급받는다

3. 적절한 장부와 기록을 유지한다



4. 거래내역을 기록한다

하루에 10번 이상의 현금 거래시, 다음 사항을 준수해야 하며, 준수하지 않을 경우에는 각각의 날에 해당하는 별도의 위반법을 해당 비즈니스에 적용합니다:

- (1) 영수증이나 다른 거래 기록을 제시해야 하며
- (2) 육필이나 수동식, 또는 전자 현금 계산대로 작성된 모든 비즈니스 거래 기록을 지속적으로 유지한다



5. 세금 회피 가격 책정

현금 거래에 다른 가격을 제시하는 비즈니스는 세금 회피 가격 책정에 해당하는 위반으로 간주됩니다.



6. 세금 회피 목적의 현금 보유

세금 회피를 위해 현금을 보유하고 있는 비즈니스는 세금 회피 현금 보유에 해당하는 위반으로 간주됩니다.

7. 세금 집행인을 방해할 경우

다음 금액에 초과되지 않는 벌금이 적용됩니다:

1. 대부분의 경우, \$500  
현금 베이스 비즈니스인 경우, \$1,000

2. 대부분의 경우, \$500  
현금 베이스 비즈니스인 경우, \$2,000

3. 대부분의 경우, \$1,000  
현금 베이스 비즈니스인 경우, \$2,000

4. 대부분의 경우, \$1,000  
현금 베이스 비즈니스인 경우, \$2,000

5. 대부분의 경우, \$2,000  
현금 베이스 비즈니스인 경우, \$3,000

6. 대부분의 경우, \$2,000  
현금 베이스 비즈니스인 경우, \$3,000

7. \$2,000

더 자세한 정보를 위해서는 [www.hawaii.gov/tax](http://www.hawaii.gov/tax)를 방문하여 주시기 바랍니다

Print Name (성명) \_\_\_\_\_

Signature and Date (mm/dd/yyyy) (사인, 날짜 (월/일/년도)) \_\_\_\_\_

Business Name (사업체 이름): \_\_\_\_\_

Address (주소): \_\_\_\_\_

Telephone Number (전화 번호): \_\_\_\_\_



# Sa Inyong Negosyo, Kasali Ba Nito Ang "Cash" Na Transaksiyon?

Noong Julio 2009, ang Deparamento ng Pagbubuwis (Department of Taxation) ay binuo and Seksiyong Espesyal sa Pagpapatupad o "Special Enforcement Section" (SES). Ang pinakamataas na layunin nito ay para seguruhin na lahat na nagbabayad ng buwis sa Hawaii ay nagbabayad ng makatarungang kabahagi at upang maiwasan ang pagkalamang sa mga taos pusong sumusunod sa Batas ng Pagbubuwis.

Ang batasan ng Hawaii ay binigyan ng SES ang pahintulot para isakatuparan ang mga batas ng buwis sa pamamagitan ng "Citation" upang tigilan at iwasan ang gawaing ito, na kung kinakailangan ay may kasamag **makaturing multa**.

## Kung Hindi Masusundang:

## Ang paglabag sa probisyong ito ay magre- resulta sa multa na hindi hihigit sa:

### 1. Ipakita ang lisensiya kung kinakailangan

1. \$500 para sa karamihan ng mga tao  
\$1,000 para sa mga negosyong cash ang bayaran



### 2. Kumuha ng lisensyan'g General Excise (GE)

2. \$500 para sa karamihan ng mga tao  
\$2,000 para sa mga negosyong cash ang bayaran



### 3. Panatilihin ang sapat na mga libro at mga talaan

3. \$1,000 para sa karamihan ng mga tao  
\$2,000 para sa mga negosyong cash ang bayaran

### 4. Itala lahat na transaksiyon

Labag sa batas na magsama ng higit na sampung (10) nabubuwisan na mga transaksiyon "Cash" bawat araw, at hindi:  
(1) Nag-aalok ng isang recibo o iba pang rekord ng transaksyon, at

4. \$1,000 para sa karamihan ng mga tao  
\$2,000 para sa mga negosyong cash ang bayaran

(2) Magpanatili ng isang magkapanabay na talaan ng buong transaksiyon ng negosyo bawat araw sa mga pamaraang ito; sa pamamagitan ng pagsulat sa kamay, paggamit ng de mano o de electresidad na cash register.

**Bawat araw ang isang tao ay lumalabag sa seksyon na ito ay ituturing bilang isang hiwalay na paglabag.**

### 5. Pag-aayos ng presyo upang maiwasan ang buwis

5. \$2,000 para sa karamihan ng mga tao  
\$3,000 para sa mga negosyong cash ang bayaran

Ang mga taong nag-aalok ng magkakaibang presyo, kung saan ang transaksiyon ay binabayaran sa pamamagitan ng cash ay maaaring makalabag sa kasalanang iwas buwis pag-aayos ng presyo.

### 6. Pag-aari ng pera na ang layunin ay upang makaiwas sa buwis

6. \$2,000 para sa karamihan ng mga tao  
\$3,000 para sa mga negosyong cash ang bayaran

Kung saan ang isang tao ay nasa kanyang pag-aari ang pera na ang intensiyon ay iwasan ang buwis, ang paglabag sa pag-iwas ng buwis ay nandidiyan na.

### 7. Panghihimasok sa isang opisyal ng buwis

7. \$2,000

Para sa karagdagang impormasyon, manyaring bisitahin [www.hawaii.gov/tax](http://www.hawaii.gov/tax)

Print Name (Imprenta Ang Pangalan) \_\_\_\_\_

Signature and Date (Pirma At Petsa ) (mm/dd/yyyy) \_\_\_\_\_

Business Name (Pangalan Ng Negosyo): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number (Numero Ng Telepono): \_\_\_\_\_



## ธุรกิจของคุณใช้ “เงินสด” ในการซื้อขายหรือเปล่า?

เมื่อเดือนกรกฎาคม ปีค.ศ. 2009 กรมสรรพากรรัฐฮาวาย ได้จัดตั้งหน่วยพิเศษในการบังคับใช้กฎหมาย (หน่วย SES) ภารกิจสำคัญที่สุดของหน่วยงานนี้ก็คือกำกับดูแลให้ ผู้เสียภาษีในรัฐฮาวายทุกคนเสียภาษีตามที่กำหนดและเพื่อป้องกันไม่ให้เกิดความไม่ยุติธรรมแก่ผู้ที่ปฏิบัติตามกฎหมายภาษีของรัฐฮาวาย

กฎหมายรัฐฮาวายมอบอำนาจให้หน่วยพิเศษ SES บังคับใช้กฎหมายภาษีรัฐฮาวายได้ โดยมีอำนาจออกใบสั่งให้ยุติการกระทำฝ่าฝืนกฎหมายภาษี ซึ่งใบสั่งนี้อาจจะรวมถึงการเรียกเก็บค่าปรับเป็นเงินจำนวนสูง

### ข้อบังคับ

### ถ้าฝ่าฝืนกฎข้อบังคับ

#### กำหนดโทษปรับสูงสุดไม่เกิน

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. ต้องแสดงใบอนุญาตเมื่อเจ้าหน้าที่เรียกดู</li> <li>2. ต้องจดทะเบียนผู้ประกอบการธุรกิจ (GE) รัฐฮาวาย</li> <li>3. ต้องจัดทำบัญชีการเงินและเอกสารทางธุรกิจตามสมควร</li> <li>4. ต้องมีบันทึกหลักฐานการค้าขาย<br/>ถ้ามีการซื้อขายมากกว่า 10 ครั้งต่อวัน จะต้องปฏิบัติตามข้อบังคับต่อไปนี้ มิฉะนั้นถือว่าการกระทำผิดกฎหมาย<br/>(1) ต้องออกใบเสร็จ หรือเอกสารรับรองการซื้อขาย<br/>(2) ต้องทำบัญชีบันทึกการซื้อขายภายหลังการขายแต่ละครั้งของแต่ละวัน ซึ่งบันทึกนี้จะเป็นเอกสารเขียนด้วยลายมือ หรือเอกสารจากเครื่องเก็บเงินไฟฟ้า หรือ เครื่องเก็บเงินแบบธรรมดา ก็ได้<br/>ถ้าทำผิดกฎข้อบังคับข้อนี้ในแต่ละวัน จะถือว่าเป็นคดีประจำวันนั้น แยกจากคดีลักษณะเดียวกันของวันอื่นๆ</li> <li>5. ห้ามสมคบกันกำหนดราคาสินค้าเพื่อหลีกเลี่ยงภาษี<br/>ผู้ที่ทำการออกเอกสารการขายที่ปรากฏราคาแตกต่างไปจากราคาขายจริง ในกรณีที่มีการซื้อขายด้วยเงินสด อาจจะเข้าข่ายการกระทำผิดฝ่าฝืนกฎหมายห้ามการสมคบกันกำหนดราคาสินค้าเพื่อหลีกเลี่ยงภาษี</li> <li>6. ห้ามถือเงินตราโดยมีเจตนาเพื่อหลีกเลี่ยงภาษี<br/>ถ้ามีการถือเงินได้จากธุรกิจเป็นเงินสดโดยมีจุดประสงค์เพื่อไม่ให้มีการตรวจสอบเรียกเก็บภาษีได้ ก็จะเป็นการฝ่าฝืนกฎหมายห้ามการถือเงินตราโดยมีเจตนาเพื่อหลีกเลี่ยงภาษี</li> <li>7. ห้ามขัดขวางการปฏิบัติงานของเจ้าหน้าที่สรรพากร</li> </ol> | <ol style="list-style-type: none"> <li>1. \$500 สำหรับคนทั่วไป<br/>\$1,000 สำหรับธุรกิจที่ซื้อขายด้วยเงินสด</li> <li>\$500 สำหรับคนทั่วไป<br/>\$1,000 สำหรับธุรกิจที่ซื้อขายด้วยเงินสด</li> <li>\$1,000 สำหรับคนทั่วไป<br/>\$2,000 สำหรับธุรกิจที่ซื้อขายด้วยเงินสด</li> <li>\$1,000 สำหรับคนทั่วไป<br/>\$2,000 สำหรับธุรกิจที่ซื้อขายด้วยเงินสด</li> <li>\$2,000 สำหรับคนทั่วไป<br/>\$3,000 สำหรับธุรกิจที่ซื้อขายด้วยเงินสด</li> <li>\$2,000 สำหรับคนทั่วไป<br/>\$3,000 สำหรับธุรกิจที่ซื้อขายด้วยเงินสด</li> <li>\$2,000</li> </ol> |
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ต้องการรายละเอียดเพิ่มเติม โปรดดูที่ [www.hawaii.gov/tax](http://www.hawaii.gov/tax)

ชื่อ (เขียนตัวบรรจง)

ลายเซ็นและวันที่ (เดือน/วัน/ปี) mm/dd/yyyy

ชื่อกิจการ \_\_\_\_\_

ที่อยู่ \_\_\_\_\_

เบอร์โทรศัพท์ \_\_\_\_\_



# Cơ sở làm ăn của bạn có làm bằng tiền mặt?

Kể từ Tháng Bảy 2009 sở thuế vụ của tiểu bang Hawaii (Department of Taxation) đã thành lập một đội đặc nhiệm SES, Special Enforcement Section. Mục đích chính của SES là để bảo đảm mọi người đóng thuế đồng đều, tránh gây bất lợi những người thi hành đúng luật thuế của tiểu bang Hawaii.

Theo luật pháp Hawaii, SES được quyền bắt buộc mọi người thi hành đúng theo luật thuế Hawaii bằng cách biên phạt ngừng kinh doanh hoặc phạt tiền, gồm **số tiền phạt rất lớn**.

**Nếu như bạn không:**

**Mức phạt sẽ là, nhưng không quá:**



**1. Xuất trình môn bài khi được hỏi**  
(General Excise license)

**1. \$500** hầu hết cá nhân  
**\$1,000** cơ sở làm ăn tiền mặt

**2. Có môn bài**  
(General Excise license)

**2. \$500** hầu hết cá nhân  
**\$2,000** cơ sở làm ăn tiền mặt



**3. Gửi sổ sách**

**3. \$1,000** hầu hết cá nhân  
**\$2,000** cơ sở làm ăn tiền mặt



**4. Ghi nhận giao dịch**  
Phạm luật nếu có hơn 10 giao dịch trong một ngày mà không:

**4. \$1,000** cho hầu hết cá nhân  
**\$2,000** cơ sở làm ăn tiền mặt

- (1) Có biên nhận
- (2) Giữ hồ sơ giao dịch mỗi ngày bằng tay hoặc bằng máy tính tiền

Vi phạm ở phần này sẽ được tính từng ngày



**5. Sửa giá tiền để trốn thuế**  
Nhận giao dịch với giá rẻ hơn nếu trả bằng tiền mặt, có thể phạm luật sửa giá tiền để trốn thuế.

**5. \$2,000** cho hầu hết cá nhân  
**\$3,000** cơ sở làm ăn tiền mặt



**6. Gửi tiền mặt để trốn thuế**  
Người nào giữ tiền mặt với mục đích để trốn thuế, là đã vi phạm luật

**6. \$2,000** hầu hết mọi người  
**\$3,000** cơ sở làm ăn tiền mặt



**7. Cản trở công việc của nhân viên sở thuế**

**7. \$2,000**

Để biết thêm thông tin, xin vui lòng truy cập: [www.hawaii.gov/tax](http://www.hawaii.gov/tax)

Tên và Họ \_\_\_\_\_

Chữ ký và Ngày ký (mm/dd/yyyy) \_\_\_\_\_

Tên cửa hàng: \_\_\_\_\_

Địa chỉ: \_\_\_\_\_

Số điện thoại: \_\_\_\_\_



RAMSEYER FORMAT

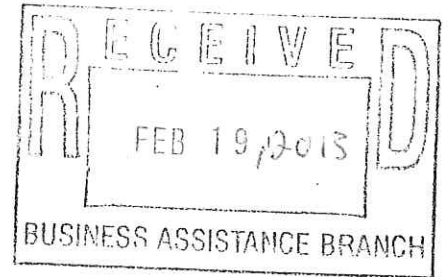
HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 231

ADMINISTRATION OF TAXES;  
CASH ECONOMY ENFORCEMENT; CITATIONS



§18-231-91-01T	Procedures; scope and purpose
§18-231-91-02T	Definitions
§18-231-91-03T	Cease and desist citation; requirements
§18-231-91-04T	Issuance of a cease and desist citation
§18-231-91-05T	Response to cease and desist citation
§18-231-91-06T	Venue
§18-231-91-07T	Hearing; scheduling; prehearing conferences
§18-231-91-08T	Presiding officer
§18-231-91-09T	Proceedings
§18-231-91-10T	Decision
§18-231-91-11T	Enforcement and stay
§18-231-91-12T	Computation of time
§18-231-91-13T	Filing of documents
§18-231-91-14T	Evidence
§18-231-92-01T	[Reserved]
§18-231-93-01T	[Reserved]
§18-231-94-01T	Fine for failure to produce license
§18-231-95-01T	Fine for failure to keep adequate books and records
§18-231-96-01T	Fine for failure to record transaction
§18-231-97-01T	[Reserved]
§18-231-98-01T	Fine for tax avoidance price fixing
§18-231-99-01T	[Reserved]
§18-231-100-01T	Fine for interference with a tax official

(h) Should any section, paragraph, sentence, clause, phrase, or application of this subchapter be declared unconstitutional or invalid for any reason, the remainder of any other application of said chapter shall not be affected thereby.

**§18-231-91-02T Definitions.** As used in sections 18-231-91-1-01T through 18-231-91-100-01T:

"Department" means the department of taxation.

"Director" means the director of taxation.

"Employee" means an employee of the department.

"Person" includes one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity, and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member, or principal is under a duty to perform and is principally responsible for performing the act. Notice or contact to an employee, representative, or agent of the person shall be notice or contact to the person.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS.

**§18-231-91-03T Cease and desist citation; requirements.**

(a) A cease and desist citation must be issued on the forms prescribed by the department. There may be field citations, as well as office citations that may differ in form and size; however either must include the content as required by this section.

(b) A cease and desist citation shall include the following in its contents:

- (1) The name and address of the person to whom the cease and desist citation is being served;
- (2) The location of where the offense is about to occur, is occurring, or has occurred. If the location is a vehicle, the vehicle must be specifically identified, including its location at the time of the infraction;
- (3) The specific alleged violation or violations of Title 14 or the administrative rules adopted thereunder which constitute cause for the issuance of the cease and desist citation, including (if applicable) any allegation that the person is a cash-based business as defined in section 231-93, HRS;

- (3) By placing the citation in the United States mail, postage prepaid, and properly addressed to the residence address of the person to whom the citation is intended;
- (4) If the citation is served by mail, a statement that the citation was deposited in the United States mail, postage prepaid, and has not been returned by the United States Postal Service shall constitute proper service;

Section 18-231-91-04T(c)(2) is illustrated by the following example:

**EXAMPLE:** Shorty's Drug Store is a chain of drug and sundry stores throughout Hawaii. There are over 50 locations. During an investigation of one of Shorty's locations located in Kona Town on the Big Island, it was observed by the special enforcement section that this one location was failing to record sales transactions by receipt. A cease and desist citation will be properly issued if the citation identifies Shorty's Drug Store's corporate office in Honolulu as the person, as well as an identification of the Kona Town location as where the offense occurred.

**§18-231-91-05T Response to Cease and Desist Citation.** (a)

A person who has been served with a cease and desist citation must respond within thirty days from the date of its issuance:

- (1) By paying the stated amount of the monetary fine. Such payment shall constitute acknowledgement of the violation and a waiver of further rights of review, provided that if the tendered payment is dishonored for any reason not the fault of the department, the person cited will be deemed not to have answered the citation; or
- (2) By contesting the determination that a violation of title 14, HRS, has occurred by requesting a contested case hearing in accordance with these rules.

(b) If the person cited in the cease and desist citation fails to answer within thirty days from the date the citation is issued, the failure shall be treated as an acknowledgement that the allegations contained in the citation are true, and that the relief sought in the citation, including any monetary fines, is appropriate, and that a final decision shall issue in favor of the department without the need for findings of facts and conclusions of law.

has failed to appear, a default shall be issued against the respondent and the allegations contained in the citation shall be deemed admitted and any relief sought in the citation, including any monetary fines, shall be granted, and a final decision shall issue in favor of the department without the need for findings of facts and conclusions of law. If both parties fail to appear, the citation shall be dismissed without prejudice.

(g) The presiding officer may conduct pre-hearing conferences for the purpose of formulating or simplifying issues, scheduling the hearing, and setting deadlines for the submission of exhibits, the naming and exchange of witnesses and the submission of hearing briefs and memoranda

§18-231-91-08T Presiding officer. (a) The presiding officer shall conduct the hearing and present a recommended decision to the director, which recommended decision shall include proposed findings of fact and conclusions of law. If the presiding officer's recommended decision is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation by mail. The person contesting the citation shall thereafter have ten calendar days from the date the recommended decision is mailed to file exceptions to the recommended decision and to present arguments to the director in writing. The director shall then render a final decision in writing containing findings of fact and conclusions of law, and shall issue such orders and take such further action as may be required.

(b) The presiding officer shall be disqualified if he/she:

- (1) Has a substantial financial interest; as defined in section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the contested case;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has materially participated in the investigation preceding the institution of the contested case proceedings or has participated in the development of the evidence to be introduced in the hearing; or
- (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

Any alleged conflict may be raised and argued upon motion by either party, and the presiding officer shall rule upon such motion. Conflicts under this section may be waived if both parties approve.

(e) The presiding officer shall take a verbatim record of the evidence presented at any hearing by any reasonable means within the presiding officer's discretion, including an audio recording. At the request of a party, the presiding officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of evidence presented at any hearing. Any party may request a certified transcript of the proceedings. The party making the request for the services of a stenographer or certified copies of the hearing shall be responsible for the relevant costs.

(f) The presiding officer may consider evidence of whether there were mitigating circumstances surrounding the commission of an alleged violation. If the presiding officer accepts mitigating circumstances into evidence, there shall be a finding that a violation has occurred and the presiding officer may abate any amount of a monetary fine imposed within the presiding officer's discretion.

§18-231-91-10T Decision. The department shall transmit any recommended decisions, final orders, opinions, or rulings entered in a contested case hearing to the parties and participants. Documents may be sent electronically, by facsimile transmission, or by depositing the same, postage prepaid in the United States mail, or any combination thereof.

§18-231-91-11T Enforcement and stay. (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions shall be due and payable only upon entrance of an order by a court of competent jurisdiction that is final and non-appealable.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed.

all papers shall be filed. Documents sent electronically shall not require any copies.

(e) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

§18-231-91-14T Evidence. (a) Evidence shall consist of the cease and desist citation, any applicable reports, or other written statements submitted by either party. The presiding officer shall not be bound by rules of evidence, except as to provisions relating to privileged communications.

(b) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view to doing substantial justice.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record. Before any prepared testimony is read, the witness shall deliver copies thereof to the presiding officer and all counsel parties unless excused by the presiding officer. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If any matter contained in a document on file as a public record with the department is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced and may be received in evidence by reference.

(f) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(g) At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time.

§18-231-92-01T. [Reserved]

demand by the special enforcement section shall be fined as follows:

- (1) For the first offense, a fine of \$500, provided that if the person had not previously been contacted by the special enforcement section, no fine shall be imposed;
- (2) For second and subsequent offenses, a fine of \$1,000; provided that if the person is a cash-based business, the fine shall be \$2,000.

(b) A person shall not be required to keep books and records in any particular format, provided that the books and records fairly reflect the financial matters of the business, including (but not limited to) the revenue and expenses of the business.

~~[(c) A person shall have fourteen days to produce the books and records after demand by the special enforcement section, unless otherwise agreed in writing.]~~

(c) The special enforcement section shall demand the production of books and records in writing that shall state:

(1) That if the person was unable to produce the books and records while the special enforcement section officer was present, the person must make an appointment with the special enforcement section officer to deliver the books and records to that officer or another officer of the special enforcement section at a state tax office within 14 days; and

(2) What period of books and records the person must produce.

(d) Where a person's business records are not in his or her possession due to transient business location, the Special Enforcement Section will allow the person to produce the books and records at a state tax office. A person may agree to produce books and records outside a state tax office, or agree to produce books and records in a period of time shorter than 14 days, at his or her discretion and upon agreement with a special enforcement section officer.

(e) Only one citation may be issued to the person in any thirty day period. Every citation issued under this section shall be considered as a separate violation.

**§18-231-96-01T. Fine for failure to record transaction.**

(a) A person who conducts more than ten taxable business transactions per day in cash and who fails to offer a receipt or other record of the transaction and who fails to maintain a contemporaneously generated record of all business transactions conducted each day, shall be fined as follows:

(d) If the person is otherwise in compliance with title 14 at the time a fine for violation of section 231-96 is issued, the fine shall be commensurate with the violation as follows:

(1) For the first fine issued for a first offense under subsection (a) (1), the fine, or a portion thereof, may be waived; and

(2) For second and subsequent fines offense under subsection (a) (2), such fines shall stand as issued.

(e) For purposes of this section, "cash" shall include legal tender of any country, currency in whatever form, and negotiable instruments in whatever form, but shall not include charge card or debit card payments.

(f) For purposes of this section, a transaction is deemed to have occurred at the time that a customer pays for the goods and/or services and the person accepts the payment, notwithstanding any rights of return or refund that the customer may have.

(g) Only one citation may be issued to the person in any twenty-four hour period. Every citation issued under this section shall be considered as a separate violation.

§18-231-97-01T [Reserved]

§18-231-98-01T. Fine for tax avoidance price fixing. (a) A person who sells, offers to sell, or otherwise conducts business offering a lower price to complete the transaction when paid for in cash than by any other payment means shall be fined \$2,000; provided that if the person is a cash-based business, the fine shall be \$3,000.

(b) No citation shall issue if the person can establish a legitimate business purpose for such differentiation. For example, a legitimate business purpose exists if some fee or cost that is associated with the alternative means of payment (including, but not limited to credit or debit card merchant fees) is not present when payment is made in cash, provided that the discount offered does not exceed the amount of such fee or cost.

(c) In any proceeding under this section, the person shall have the burden of showing a legitimate business purpose for the price differentiation and the department shall have the burden of showing that the person offered a lower price if the transaction was consummated in cash than if consummated otherwise.

(d) For purposes of this section, "cash" shall include legal tender of any country, currency in whatever form, and



STANDARD FORMAT

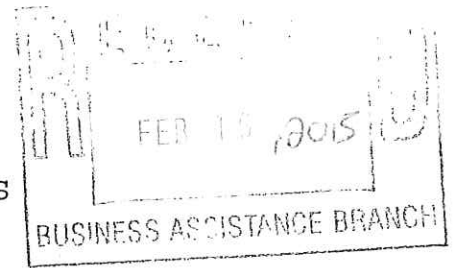
HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 231

ADMINISTRATION OF TAXES;  
CASH ECONOMY ENFORCEMENT; CITATIONS



§18-231-91-01T	Procedures; scope and purpose
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§18-231-91-14T	Evidence
§18-231-92-01T	[Reserved]
§18-231-93-01T	[Reserved]
§18-231-94-01T	Fine for failure to produce license
§18-231-95-01T	Fine for failure to keep adequate books and records
§18-231-96-01T	Fine for failure to record transaction
§18-231-97-01T	[Reserved]
§18-231-98-01T	Fine for tax avoidance price fixing
§18-231-99-01T	[Reserved]
§18-231-100-01T	Fine for interference with a tax official

(h) Should any section, paragraph, sentence, clause, phrase, or application of this subchapter be declared unconstitutional or invalid for any reason, the remainder of any other application of said chapter shall not be affected thereby.

§18-231-91-02T Definitions. As used in sections 18-231-91-1-01T through 18-231-91-100-01T:

"Department" means the department of taxation.

"Director" means the director of taxation.

"Employee" means an employee of the department.

"Person" includes one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity, and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member, or principal is under a duty to perform and is principally responsible for performing the act. Notice or contact to an employee, representative, or agent of the person shall be notice or contact to the person.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS.

§18-231-91-03T Cease and desist citation; requirements.

(a) A cease and desist citation must be issued on the forms prescribed by the department. There may be field citations, as well as office citations that may differ in form and size; however either must include the content as required by this section.

(b) A cease and desist citation shall include the following in its contents:

- (1) The name and address of the person to whom the cease and desist citation is being served;
- (2) The location of where the offense is about to occur, is occurring, or has occurred. If the location is a vehicle, the vehicle must be specifically identified, including its location at the time of the infraction;
- (3) The specific alleged violation or violations of Title 14 or the administrative rules adopted thereunder which constitute cause for the issuance of the cease and desist citation, including (if applicable) any allegation that the person is a cash-based business as defined in section 231-93, HRS;

- (3) By placing the citation in the United States mail, postage prepaid, and properly addressed to the residence address of the person to whom the citation is intended;
- (4) If the citation is served by mail, a statement that the citation was deposited in the United States mail, postage prepaid, and has not been returned by the United States Postal Service shall constitute proper service;

Section 18-231-91-04T(c) (2) is illustrated by the following example:

**EXAMPLE:** Shorty's Drug Store is a chain of drug and sundry stores throughout Hawaii. There are over 50 locations. During an investigation of one of Shorty's locations located in Kona Town on the Big Island, it was observed by the special enforcement section that this one location was failing to record sales transactions by receipt. A cease and desist citation will be properly issued if the citation identifies Shorty's Drug Store's corporate office in Honolulu as the person, as well as an identification of the Kona Town location as where the offense occurred.

**§18-231-91-05T Response to Cease and Desist Citation.** (a)

A person who has been served with a cease and desist citation must respond within thirty days from the date of its issuance:

- (1) By paying the stated amount of the monetary fine. Such payment shall constitute acknowledgement of the violation and a waiver of further rights of review, provided that if the tendered payment is dishonored for any reason not the fault of the department, the person cited will be deemed not to have answered the citation; or
- (2) By contesting the determination that a violation of title 14, HRS, has occurred by requesting a contested case hearing in accordance with these rules.

(b) If the person cited in the cease and desist citation fails to answer within thirty days from the date the citation is issued, the failure shall be treated as an acknowledgement that the allegations contained in the citation are true, and that the relief sought in the citation, including any monetary fines, is appropriate, and that a final decision shall issue in favor of the department without the need for findings of facts and conclusions of law.

has failed to appear, a default shall be issued against the respondent and the allegations contained in the citation shall be deemed admitted and any relief sought in the citation, including any monetary fines, shall be granted, and a final decision shall issue in favor of the department without the need for findings of facts and conclusions of law. If both parties fail to appear, the citation shall be dismissed without prejudice.

(g) The presiding officer may conduct pre-hearing conferences for the purpose of formulating or simplifying issues, scheduling the hearing, and setting deadlines for the submission of exhibits, the naming and exchange of witnesses and the submission of hearing briefs and memoranda

§18-231-91-08T Presiding officer. (a) The presiding officer shall conduct the hearing and present a recommended decision to the director, which recommended decision shall include proposed findings of fact and conclusions of law. If the presiding officer's recommended decision is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation by mail. The person contesting the citation shall thereafter have ten calendar days from the date the recommended decision is mailed to file exceptions to the recommended decision and to present arguments to the director in writing. The director shall then render a final decision in writing containing findings of fact and conclusions of law, and shall issue such orders and take such further action as may be required.

- (b) The presiding officer shall be disqualified if he/she:
- (1) Has a substantial financial interest, as defined in section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the contested case;
  - (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
  - (3) Has materially participated in the investigation preceding the institution of the contested case proceedings or has participated in the development of the evidence to be introduced in the hearing; or
  - (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

Any alleged conflict may be raised and argued upon motion by either party, and the presiding officer shall rule upon such motion. Conflicts under this section may be waived if both parties approve.

(e) The presiding officer shall take a verbatim record of the evidence presented at any hearing by any reasonable means within the presiding officer's discretion, including an audio recording. At the request of a party, the presiding officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of evidence presented at any hearing. Any party may request a certified transcript of the proceedings. The party making the request for the services of a stenographer or certified copies of the hearing shall be responsible for the relevant costs.

(f) The presiding officer may consider evidence of whether there were mitigating circumstances surrounding the commission of an alleged violation. If the presiding officer accepts mitigating circumstances into evidence, there shall be a finding that a violation has occurred and the presiding officer may abate any amount of a monetary fine imposed within the presiding officer's discretion.

**§18-231-91-10T Decision.** The department shall transmit any recommended decisions, final orders, opinions, or rulings entered in a contested case hearing to the parties and participants. Documents may be sent electronically, by facsimile transmission, or by depositing the same, postage prepaid in the United States mail, or any combination thereof.

**§18-231-91-11T Enforcement and stay.** (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions shall be due and payable only upon entrance of an order by a court of competent jurisdiction that is final and non-appealable.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed.

all papers shall be filed. Documents sent electronically shall not require any copies.

(e) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

§18-231-91-14T Evidence. (a) Evidence shall consist of the cease and desist citation, any applicable reports, or other written statements submitted by either party. The presiding officer shall not be bound by rules of evidence, except as to provisions relating to privileged communications.

(b) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view to doing substantial justice.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record. Before any prepared testimony is read, the witness shall deliver copies thereof to the presiding officer and all counsel parties unless excused by the presiding officer. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If any matter contained in a document on file as a public record with the department is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced and may be received in evidence by reference.

(f) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(g) At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time.

§18-231-92-01T. [Reserved]

demand by the special enforcement section shall be fined as follows:

- (1) For the first offense, a fine of \$500, provided that if the person had not previously been contacted by the special enforcement section, no fine shall be imposed;
- (2) For second and subsequent offenses, a fine of \$1,000; provided that if the person is a cash-based business, the fine shall be \$2,000.

(b) A person shall not be required to keep books and records in any particular format, provided that the books and records fairly reflect the financial matters of the business, including (but not limited to) the revenue and expenses of the business.

(c) The special enforcement section shall demand the production of books and records in writing that shall state:

(1) That if the person was unable to produce the books and records while the special enforcement section officer was present, the person must make an appointment with the special enforcement section officer to deliver the books and records to that officer or another officer of the special enforcement section at a state tax office within 14 days; and

(2) What period of books and records the person must produce.

(d) Where a person's business records are not in his or her possession due to transient business location, the Special Enforcement Section will allow the person to produce the books and records at a state tax office. A person may agree to produce books and records outside a state tax office, or agree to produce books and records in a period of time shorter than 14 days, at his or her discretion and upon agreement with a special enforcement section officer.

(e) Only one citation may be issued to the person in any thirty day period. Every citation issued under this section shall be considered as a separate violation.

**§18-231-96-01T. Fine for failure to record transaction.**

(a) A person who conducts more than ten taxable business transactions per day in cash and who fails to offer a receipt or other record of the transaction and who fails to maintain a contemporaneously generated record of all business transactions conducted each day, shall be fined as follows:

- (1) For a first offense, a fine of \$500, provided that if the person had not previously been contacted by the special enforcement section, no fine shall be imposed;

notwithstanding any rights of return or refund that the customer may have.

(g) Only one citation may be issued to the person in any twenty-four hour period. Every citation issued under this section shall be considered as a separate violation.

§18-231-97-01T [Reserved]

§18-231-98-01T. Fine for tax avoidance price fixing. (a)

A person who sells, offers to sell, or otherwise conducts business offering a lower price to complete the transaction when paid for in cash than by any other payment means shall be fined \$2,000; provided that if the person is a cash-based business, the fine shall be \$3,000.

(b) No citation shall issue if the person can establish a legitimate business purpose for such differentiation. For example, a legitimate business purpose exists if some fee or cost that is associated with the alternative means of payment (including, but not limited to credit or debit card merchant fees) is not present when payment is made in cash, provided that the discount offered does not exceed the amount of such fee or cost.

(c) In any proceeding under this section, the person shall have the burden of showing a legitimate business purpose for the price differentiation and the department shall have the burden of showing that the person offered a lower price if the transaction was consummated in cash than if consummated otherwise.

(d) For purposes of this section, "cash" shall include legal tender of any country, currency in whatever form, and negotiable instruments in whatever form, but shall not include charge card or debit card payments.

(e) Only one citation may be issued to the person in any thirty day period. Every citation issued under this section shall be considered as a separate violation.

§18-231-99-01T [Reserved]

§18-231-100-01T Fine for interference with a tax official. (a) A person who intentionally interferes with, hinders, obstructs, prevents, or impedes any investigator, auditor, collector, or other employee of the department from



## VI. Legislative Matters - Update

1. Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015

# GM526

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, ANTHONY BORGE, for a term to expire 6-30-2015.  
Report Title: Small Business Regulatory Review Board  
Description:  
Companion:  
Package:  
Current Referral: EGH  
Introducer(s):

<u>Sort by</u> <u>Date</u>	<u>Status Text</u>
1/22/2013	S Received.
1/22/2013	S Referred to EGH.
3/6/2013	S The committee(s) on EGH has scheduled a public hearing on 03-13-13 3:00PM in conference room 016.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## GM526

## VI. Legislative Matters

2. Governor's Message No. 527, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2014

# GM527

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, BARBARA BENNETT, for a term to expire 6-30-2014.  
Report Title: Small Business Regulatory Review Board  
Description:  
Companion:  
Package:  
Current Referral: EGH  
Introducer(s):

<u>Sort by</u> <u>Date</u>	<u>Status Text</u>
1/22/2013	S Received.
1/22/2013	S Referred to EGH.
3/6/2013	S The committee(s) on EGH has scheduled a public hearing on 03-13-13 3:00PM in conference room 016.

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Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## GM527

## VI. Legislative Matters

3. Governor's Message No. 528, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Chu Lan Shubert-Kwock, for a term to expire June 30, 2016

# GM528

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, CHU LAN SHUBERT-KWOCK, for a term to expire 6-30-2016.

Report Title: Small Business Regulatory Review Board

Description:

Companion:

Package:

Current Referral: EGH

Introducer(s):

<u>Sort by</u> <u>Date</u>	<u>Status Text</u>
1/22/2013	S Received.
1/22/2013	S Referred to EGH.
3/6/2013	S The committee(s) on EGH has scheduled a public hearing on 03-13-13 3:00PM in conference room 016.

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## GM528

## VI. Legislative Matters

4. Governor's Message No. 529, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Howard Lum, for a term to expire June 30, 2014

# GM529

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, HOWARD LUM, for a term to expire 6-30-2014.

Report Title: Small Business Regulatory Review Board

Description:

Companion:

Package:

Current Referral: EGH

Introducer(s):

<u>Sort by</u> <u>Date</u>	<u>Status Text</u>
1/22/2013	S Received.
1/22/2013	S Referred to EGH.
3/6/2013	S The committee(s) on EGH has scheduled a public hearing on 03-13-13 3:00PM in conference room 016.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

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## GM529



## VI. Legislative Matters

5. Governor's Message No. 530, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30, 2016

# GM530

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, KYOKO KIMURA, for a term to expire 6-30-2016.  
 Report Title: Small Business Regulatory Review Board  
 Description:  
 Companion:  
 Package:  
 Current Referral: EGH  
 Introducer(s):

<u>Sort by</u> <u>Date</u>	Status Text
1/22/2013	S Received.
1/22/2013	S Referred to EGH.
3/6/2013	S The committee(s) on EGH has scheduled a public hearing on 03-13-13 3:00PM in conference room 016.

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

# GM530

## VI. Legislative Matters

6. Governor's Message No. 531, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Leslie Mullens, for a term to expire June 30, 2015

# GM531

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Governorial Nominee, LESLIE MULLENS, for a term to expire 6-30-2015.  
Report Title: Small Business Regulatory Review Board  
Description:  
Companion:  
Package:  
Current Referral: EGH  
Introducer(s):

<u>Sort by</u> <u>Date</u>	<u>Status Text</u>
1/22/2013	S Received.
1/22/2013	S Referred to EGH.
3/6/2013	S The committee(s) on EGH has scheduled a public hearing on 03-13-13 3:00PM in conference room 016.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## GM531

## VII. Administrative Matters

- A. Election of Board Chair; pursuant to Section 201M-5(d), and Election of Vice Chair and Second Vice Chair

**§201M-5 Small business regulatory review board; powers. (a)**

There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule or to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of nine members, who shall be appointed by the governor pursuant to section 26-34; provided that:

- (1) Three members shall be appointed from a list of nominees submitted by the president of the senate;
- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed by the governor;
- (4) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting member of the board;
- (5) The appointments shall reflect representation of a variety of businesses in the State;
- (6) No more than two members shall be representatives from the same type of business; and
- (7) There shall be at least one representative from each county.

For the purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the

legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

[Previous](#)

[Vol04\\_Ch0201-0257](#)

[Next](#)

## VII. Administrative Matters

- B. Leslie Mullens to facilitate discussion on: 1) Meeting etiquette; 2) Guiding principles, and values as an advisory board; 3) Questions to consider in decision-making

*Additional information is forthcoming*





# SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594  
Fax 808586-2572

## AGENDA

Wednesday, March 20, 2013 ★ 9:30 a.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436

Neil Abercrombie  
Governor

Richard C. Lim  
Director, DBEDT

Mary Alice Evans  
Deputy Director, DBEDT

### Members

Chu Lan Shubert-Kwock  
Oahu

Howard Lum  
Oahu

Anthony Borge  
Oahu

Barbara Bennett  
Kauai

Leslie Mullens  
Maui

Kyoko Y. Kimura  
Maui

Richard C. Lim  
Director, DBEDT  
Voting Ex Officio

- I.** Call to Order – Indicate the time meeting was called to order
- II.** Election of a Temporary Chair
- III.** Approval of February 20, 2013 Meeting Minutes
- IV.** Old Business
  - A. Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 17 Chapter 1722.3 Basic Health Hawaii; Chapter 1725 Assets; Chapter 1727 QUEST; Chapter 1739.1 Authorization, Payment, and Claims in the Fee-for-Service Medical Assistance Program for Non-institutional Services (Department of Human Services) – **Aileen Befitel, Program Specialist / Discussion Leader – Mary Alice Evans**
- V.** New Business
  - A. Proposed Amendments for Kauai County Code Chapter 10 Section A, Lihue Town Core Urban Design District (County of Kauai – Planning Department) - **Marie Williams, Kauai County Planning Dept. / Discussion Leader – Barbara Bennett**
  - B. Proposed HAR Title 18 Chapter 231 Administration of Taxes (Department of Taxation) – **Ted Shiraishi, Administrative Rules Officer, DoTax / Acting Discussion Leader – Tony Borge**
- VI.** Legislative Matters - Update - All GM's were recommended by the Committee on Economic Development, Government Operations and Housing to **advise & consent to the Nominations**
  1. Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015
  2. Governor's Message No. 527, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2014
  3. Governor's Message No. 528, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Chu Lan Shubert-Kwock, for a term to expire June 30, 2016
  4. Governor's Message No. 529, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Howard Lum, for a term to expire June 30, 2014
  5. Governor's Message No. 530, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30, 2016

- ✓6. Governor's Message No. 531, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Leslie Mullens, for a term to expire June 30, 2015

**VII. Administrative Matters**

- ✓A. Election of a Board Chair; pursuant to Section 201M-5(d), and Election of Vice Chair and Second Vice Chair - (?)
- ✓B. Leslie Mullens to facilitate discussion on: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making – **Leslie (handouts)**

**VIII. Adjournment**

- IX. Next Meeting:** Scheduled for Wednesday, April 17, 2013, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.





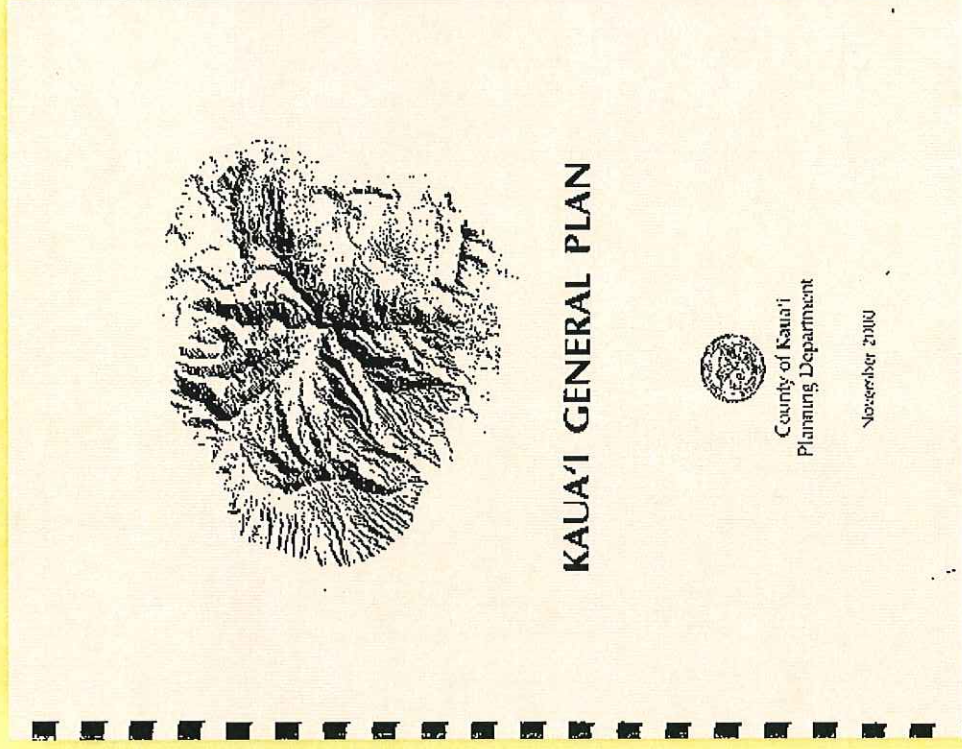
# Plan Rationale

## Issue and Opportunities for Līhu'e:

### **Renewal of Lihue**

*“Revitalization of Līhu'e will  
require a careful plan to  
attract visitors and other  
sources of business...”*

General Plan 2000 Update, Sec. 6.3.3



# Vision

## Lihue:

The vital heart of Kaua'i

A welcoming destination

Is green and beautifully landscaped

An example for all the Garden Isle

Exemplifies a pedestrian-friendly environment

Embraces business and community development



# Goals



- Foster Civic Pride
- Beautify Līhu'e streets, walkways and parks
- Enhance historic resources
- Develop Līhu'e as Kauai's main urban center
- Support multi-modal transportation
- Create a safe, pedestrian-friendly environment and a convenient bicycle network.
- Partner with others to revitalize Līhu'e
- Improve public facilities





# Mixed Use Zoning

- Designation to encourage horizontal and vertical mixed use projects.
- Refines allowable land uses and provides development standards.
- Two types:
  - Commercial Emphasis
  - Residential Emphasis

**Example of a Mixed-use Building**



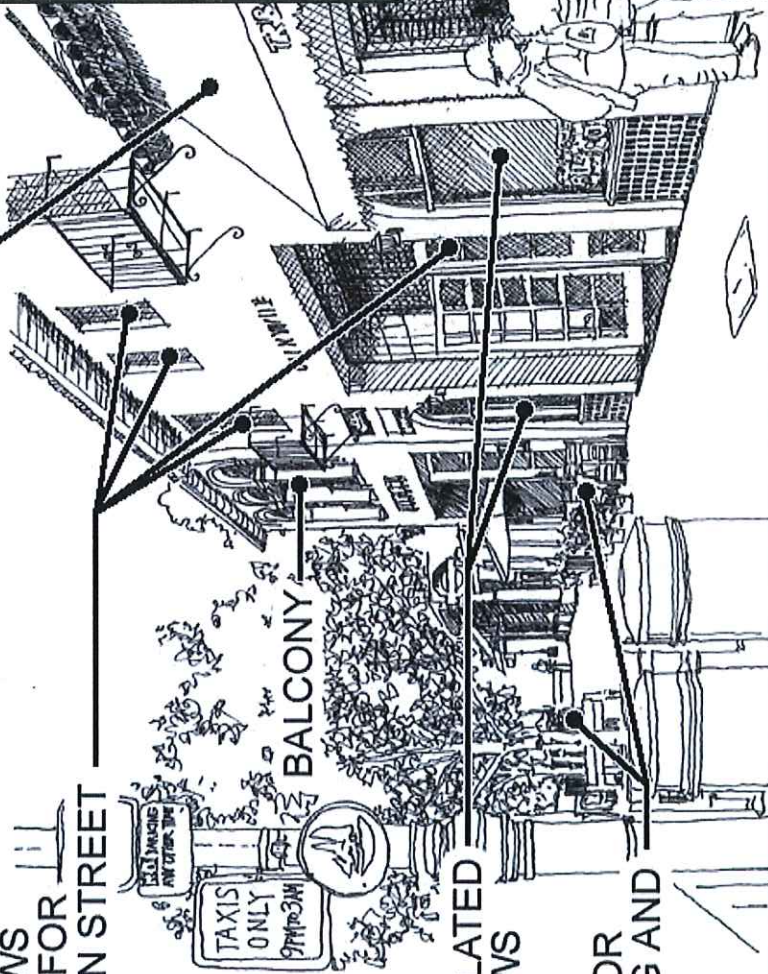
Source: <http://www.tndhomes.com/phd04.htm>

# Design and Development Guidelines

## Pedestrian-oriented Streetscape

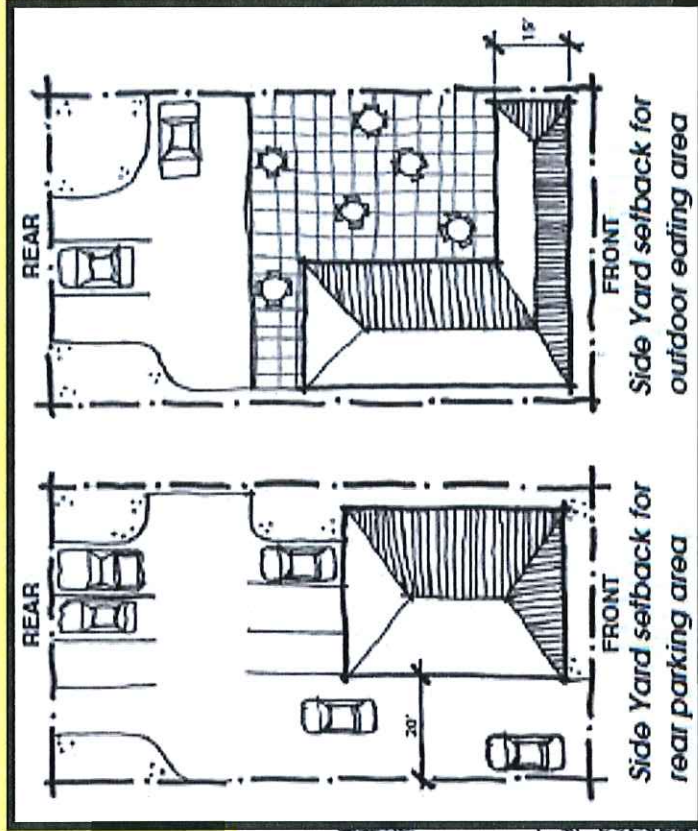
DOORS AND WINDOWS ALLOW FOR EYES ON STREET

AWNINGS



LARGE ARTICULATED WINDOWS

OUTDOOR SEATING AND EATING



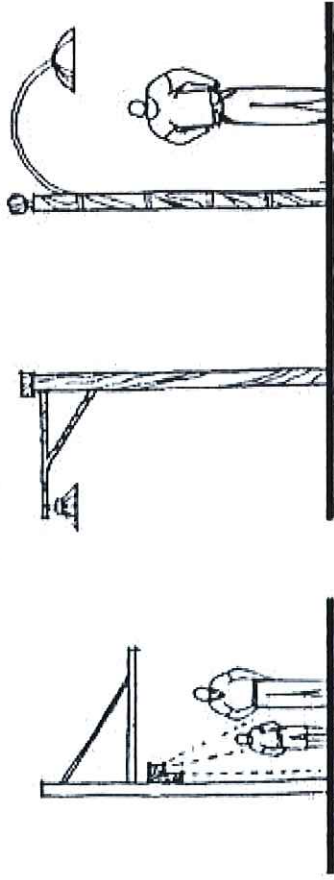
Side Yard setback for outdoor eating area

Side Yard setback for rear parking area

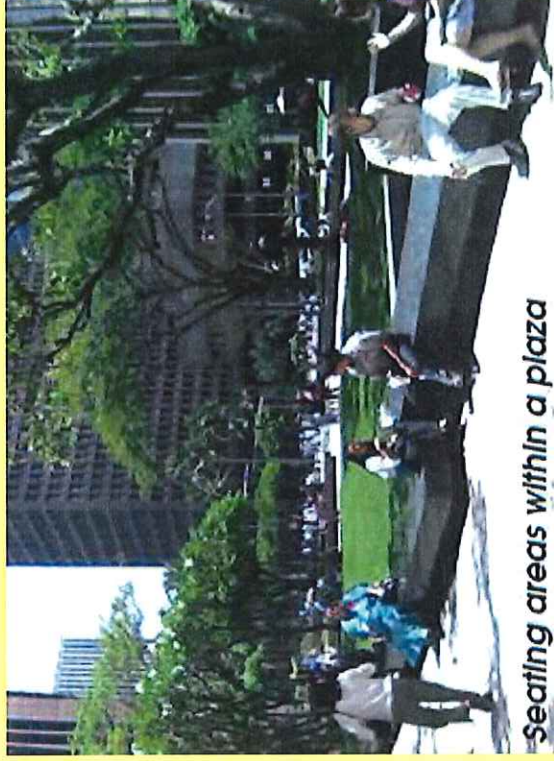
## Flexible Setbacks

# Design Considerations

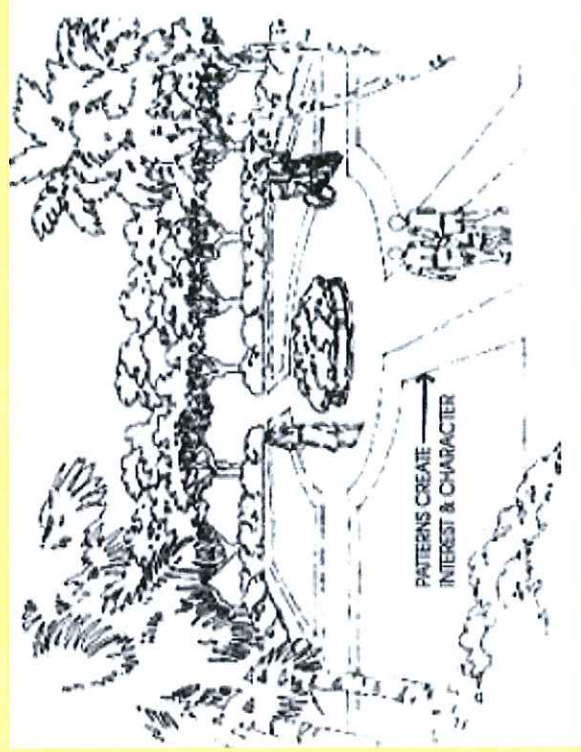
Downward Directed, Fully-Shielded Outdoor Lighting



Wide pedestrian path with landscaping



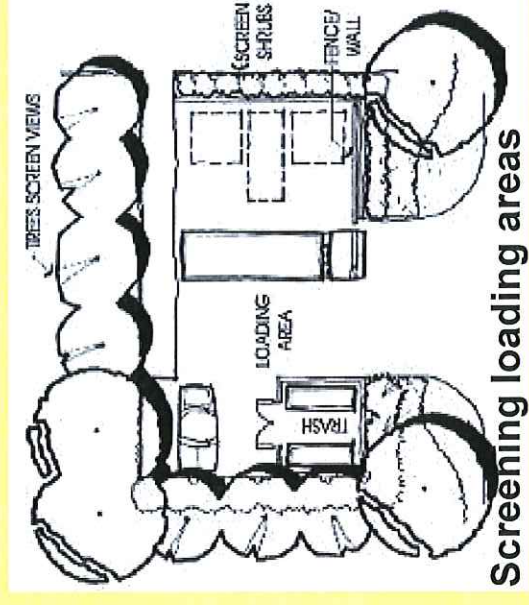
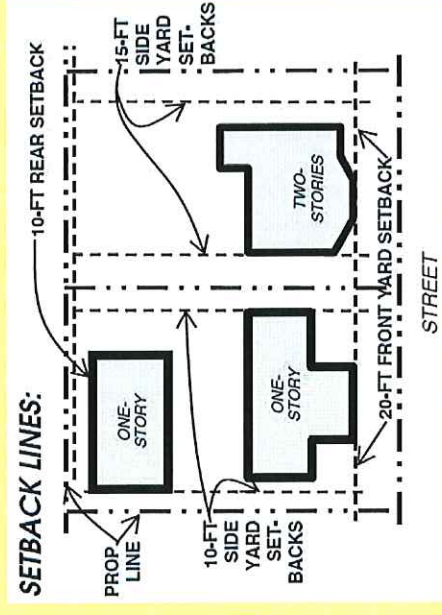
Seating areas within a plaza



PATTERNS CREATE INTEREST & CHARACTER

# Design Requirements

- Architectural context and compatibility
- Building mass and density
- Building height
- Street-level activity, building facades and fenestration
- Roofs
- Building materials and colors
- Off-street parking requirements
- Parking bonus
- Design of off-street parking facilities
- Signage
- Walls and fences
- Outdoor lighting
- Underground utilities and screening equipment
- Screening loading areas



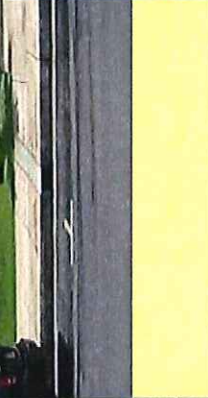


# Building Color Requirement

## SPA -D, -E, and -F:

- Light earth tones, and other colors commonly found in the Lihu'e Town Core, shall be used for new and existing development. Brighter and darker colors may be used for accents, trim and architectural features (such as canopies, awnings, and doors) that comprise relatively minor portions of the surface.

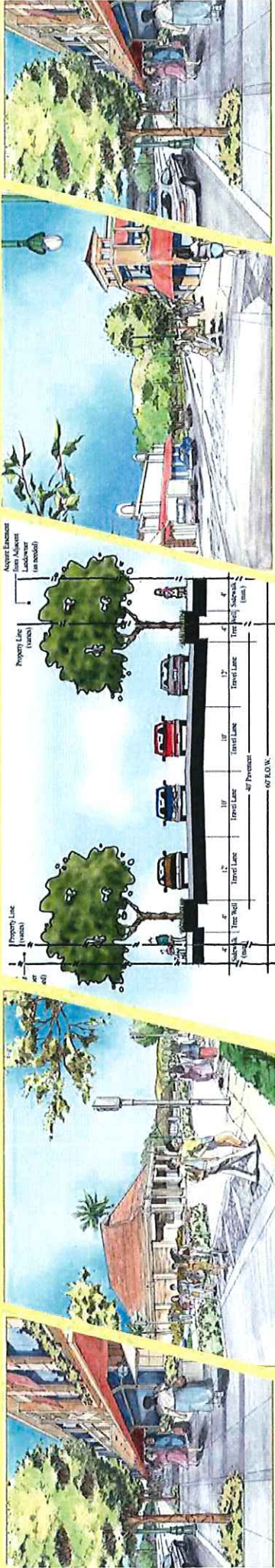
# Building Color Requirement





# Proposed Rules for the LTCUDD

- Define “earth tone”
- Clarify the process for applicants
- Develop a list of approved colors
  - Use local stakeholders
- Allow for exemptions



# End of Presentation • MAHALO!

- Kaua'i County Planning Department •
- Presentation to SBRR Board •
- March 20, 2013 •

