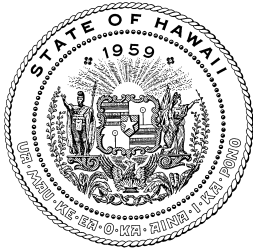


Small Business Regulatory Review Board Meeting

October 17, 2024

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 798-0737

AGENDA

Thursday, October 17, 2024 ★ 10:00 a.m.
Leiopapa A Kamehameha Building – State Office Tower
235 S. Beretania Street, Conference Room 405
Honolulu, HI 96813

As authorized under Act 220, Session Laws of Hawaii 2021, and Section 92-3.7 Hawaii Revised Statutes (HRS), the public can participate in the meeting either:

A. By attending the in-person meeting at:
Leiopapa A Kamehameha Building – State Office Tower 235 S. Beretania Street,
Conference Room 405, Honolulu, HI 96813; or

B. Via Video-audio livestream or via Telephone - to join the Video-audio livestream meeting, go to:

<https://us06web.zoom.us/j/88400776199?pwd=4wAvlu4jf7kz65ioBZWDXgpG4KIKJ8.1>

C. To Join via Telephone: Dial 1-669-900-6833 with Meeting ID 883 5814 0200 Passcode 066739

When the Chairperson asks for public testimony during the meeting, you may indicate that you want to provide oral testimony by using the raise hand function or, if calling in by telephone, entering * and 9 on your phone keypad. When recognized by the Chairperson, you will be unmuted. If calling in by phone, you can unmute and mute yourself by pressing * and 6 on your keypad.

Members of the public may also submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 508, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. The Board requests that written testimony be received by Wednesday, October 16, 2024 so it may be distributed to Board members prior to the meeting. Testimony received after that time will be distributed to the Board members at the meeting.

Copies of the Board Packet will be available on-line for review at: [Agendas & Minutes – Small Business Regulatory Review Board \(hawaii.gov\)](#) and in-person at 250 South Hotel Street, Room 4 Diamond Head, Honolulu, HI 96813 during regular business hours and in-person at 250 South Hotel Street, Room 4 Diamond Head, Honolulu, HI 96813. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

Josh Green, M.D.
Governor

Sylvia Luke
Lt. Governor

James Kunane
Tokioka
DBEDT Director

Dane K. Wicker
DBEDT Deputy Director

Members

Jonathan Shick
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Sanford Morioka
2nd Vice Chairperson
O'ahu

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Robert Cundiff
O'ahu

Tessa Gomes
O'ahu

Nikki Ige
Kaua'i

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of September 19, 2024 Meeting Minutes

III. Old Business

- A. Discussion and Action on the Small Business Impact Statement After Public Hearing and Proposed Amendments to Chapter 4, Planning Commission Rules, **Petitions for Interventions**, promulgated by Kauai Planning Department County of Kauai –
Discussion Leader – Nikki Ige

IV. Legislative Matters

- A. Discussion and Action on proposed legislation, “Relating to the Small Business Regulatory Review Board” – clarifies the requirement to establish a quorum to do business and validate acts of the Small Business Regulatory Review Board

V. Administrative Matters

- A. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, Hawaii Revised Statutes (HRS)
1. Discussion of location for the 2025 Small Business Regulatory Review Board meetings
 2. Update and Discussion on Becker Communications Inc., regarding the Board’s Small Business Outreach
 3. Presentations to Industry Associations
 4. Staff’s Small Business Outreach

VI. Next Meeting: Thursday, November 21, 2024 at 10:00 a.m., held via Zoom and at Leiopapa A Kamehameha Building – State Office Tower, Conference Room 405, Honolulu, HI 96813

VII. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Jet’aime Ariola at 808 798-0737 and jetaime.k.ariola@hawaii.gov as soon as possible, preferably at least three (3) working days prior to the meeting. Requests made as early as possible have a greater likelihood of being fulfilled.

Upon request, this notice is available in alternate/accessible formats.

II. Approval of September 19, 2024 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - **DRAFT** September 19, 2024

ZOOM MEETING RECORDING

- I. **CALL TO ORDER:** Chair Shick called the meeting to order at 10:03 a.m., with a quorum present.

MEMBERS PRESENT:

- Jonathan Shick, Chair
- Mary Albitz, Vice Chair
- Sanford Morioka, 2nd Vice Chair
- James (Kimo) Lee
- Tessa Gomes
- Nikki Ige

ABSENT MEMBERS:

- Robert Cundiff
- Garth Yamanaka
- Mark Ritchie

STAFF: DBEDT

Jet'aime Ariola
Dori Palcovich

Office of the Attorney General

Alison Kato

II. **APPROVAL OF August 15, 2024 MINUTES**

Vice Chair Albitz motioned to approve the August 15, 2024 meeting minutes, as presented. Ms. Ige seconded the motion and the Board members unanimously agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 3, Rules Relating to Industrial Wastewater Discharge Local Limits, promulgated by Department of Environmental Services-City and County of Honolulu (CCH)

Discussion leader Chair Shick briefed the members on the proposed rules after the public hearing, and introduced Mr. Drew Nishigata, Civil Engineer, to discuss what occurred at the hearing.

Mr. Nishigata provided an overview of the two testimonies from the public hearing. One of the testifiers requested that the daily maximum concentration limits be removed as the testifier's facility would be unable to meet the biochemical oxygen demand concentration limit on a regular basis. CCH responded that the daily maximum concentration limits would not be removed from the proposed rules because the concentration limits will only be implemented for any new SIU's until sufficient flow and concentration data is available.

The second testifier provided oral testimony regarding the total petroleum hydrocarbon limits specified in the proposed rules as compared to the current IWDP which specifies total oil and grease. The testifier wanted to have his company tested for TPH in the future since their business will not have any issues meeting the TPH limits of the proposed rule. In response, CCH confirmed that the proposed rules will be implementing limits for TPH, not total oil and grease. Thus, no changes to the rules based on testimonies at the public hearing were required.

Mr. Morioka motioned to pass the rules on to the Mayor for adoption. Chair Shick seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Chapter 82 Licenses and Permits, General Provisions, Rule Section 3-82-38.15, Unlawful Discrimination, promulgated by City and County of Honolulu – Liquor Commission

Ms. Anna Hirai, Assistant Administrator from the City and County of Honolulu Liquor Commission noted that prior to discussing the current proposed rules, the comprehensive rule amendments that came before this Board in 2022, which went to public hearing, were never completed. The Liquor Commission has subsequently decided not to complete the rules process without completely abandoning the effort. Thus, the Commission is planning to come back in front of this Board in the next few months with a new effort of the comprehensive rules.

The current proposed amendment will clarify the types of unlawful discrimination that licensees are prohibited from using to refuse, withhold from, or deny the full and equal enjoyment of a licensee's accommodations, facilities, goods, and services. Although this language is duplicative of the language in the statute, it is being put into the rules because licensees have been subject to unlawful discrimination for decades. In addition, the Liquor Commission Chair suggested that the existing anti-discrimination rule be updated and amended to reflect current law which is aligned with the Commission's commitment to diversity and inclusiveness.

Chair Shick noted that in regard to small business impact, there appears to be only operational issues, no financial impact. He expressed the need for when the rule moves forward that it is expressed in a cooperative manner as opposed to a forceful one, which would make it more digestible; he added that there may likely not be a lot of pushback on the change. In response, Ms. Hirai stated that an informal meeting was held regarding this proposal. While no one showed up, the Liquor Commission received 16 pieces of testimony from various organizations; none of the testimonies were from licensees.

Vice Chair Albitz motioned to pass the rules on to public hearing. Ms. Ige seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 18 Chapter 235 Income Tax Law, Subchapter 3 Individual Income Tax Law, promulgated by Department of Taxation (DoTax)

Discussion leader Mr. Yamanaka explained that the proposed rule changes have to do with the new tax law that was passed this past legislative session. DoTax is before this Board today to bring the rules in line with the State's new law to reflect more income flowing into workers' paychecks. Thus, it is anticipated that workers will break-even on their taxes rather than having to pay taxes each year or receiving a refund. He added that the rule changes don't necessarily have a financial impact on small businesses but more of an operational impact.

Mr. Winston Wong, Administrative Rules Specialist, stated that the rules address Act 46 which was signed into law this year and adjusts the standard deductions of the income tax brackets for the next six years. For 2024, the standard deduction is going up but for 2025 the state income tax deductions are being greatly adjusted.

DoTax foresees that, incrementally, taxpayers will have a lesser tax burden over the next six years. The goal is for taxpayers to have more funds to utilize throughout the year rather than waiting until the following year for a tax refund. In response to a question regarding the need to come before this Board every year for approval of the changes, Mr. Wong stated that because that requirement is currently in the law, any modifications will need a legislative change.

Information on the proposed tax changes will be publicized to the general public; payroll companies and employers will be subject to the proposed amended rules. Penalties will exist when there are not enough funds withheld; DoTax does not anticipate that this will become a problem. In terms of small business impact, Mr. Wong explained that because withholding forms are being updated and distributed to employers, small business impact is not anticipated as long as the forms are completed fairly and properly.

Chair Shick motioned to pass the rules on to public hearing. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to Rules and Regulations of the Liquor Commission of the Department of Liquor Control, promulgated by the County of Hawaii Liquor Commission

Discussion leader Mr. Yamanaka explained that although the Liquor Commission of the Department of Liquor Control did not believe there was any specific small business impact, to stay on the safe side, they wanted to bring the proposed rules in front of this Board.

Mr. Brandon Gonzalez, Administrative Officer at the Department of Liquor Control, stated that the department's administrative rules are being updated as the last updates occurred in 2010 and 2015, respectively. The changes in the rules will reflect changes in the Hawaii Revised Statutes with no foreseen impact on the licensees.

The department created business groups consisting of the liquor licensees to receive and collect feedback on the proposed rules. These groups included large chain stores, local and convenient stores, restaurants and bars. The licensees make the liquor, and distribute the liquor to stores and restaurants as well as directly to the consumer. Although some of the feedback included suggestions outside the scope of Hawaii law, many of the proposed changes are included the rule proposals.

Subsequent to coming before this Board, the Liquor Department will schedule two separate public hearings on the Island of Hawaii in November and December. This is so the new rule changes will be effective in 2025. Mr. Yamanaka thanked Brandon for the extensive outreach performed which was greatly beneficial in order to straighten out any pending issues.

Ms. Ige motioned to pass the proposed rules on to public hearing. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

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

1. Re-review and Update of Board's "Discussion Leader Assignments" for the State and County Agencies' Hawaii Administrative Rules

Vice Chair Albitz motioned to adjust the discussion leader assignments to reflect herself, Ms. Albitz, as the back-up discussion leader for Department of Commerce and Consumer Affairs. Mr. Morioka seconded the motion and the Board members unanimously agreed.

2. Update and Discussion on Becker Communications, Inc., regarding the Board's Small Business Outreach

DBEDT staff has a one-hour meeting scheduled next week with Becker Communications to review and align the Board's goals and efforts with DBEDT's goals and mission for the upcoming year.

3. Presentations to Industry Associations

Ms. Ige will be attending the Kauai Chamber of Commerce's first annual meeting/ small business expo tomorrow and will perform Board outreach. Chair Shick will be attending a Hawaii Chamber of Commerce event and will distribute the Board's brochures.

4. Staff's Small Business Outreach

Ms. Ariola is scheduled to partake in DBEDT's Small Business Fair at Leeward Community College on Saturday, September 28th. She is also scheduled to attend the Hawaii Chamber of Commerce annual meeting on October 15th, and the PBN's Women Winning in Business event on October 22nd where she will conduct outreach efforts.

- VI. **NEXT MEETING** – Thursday, October 17, 2024 at 10:00 a.m., via Zoom and in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.
- VII. **ADJOURNMENT** – Mr. Morioka motioned to adjourn the meeting and Ms. Ige seconded the motion; the meeting adjourned at 10:50 a.m.

DRAFT

III. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Chapter 4 Planning Commission Rules, Petitions for Interventions, promulgated by Kauai Planning Department County of Kauai

SMALL BUSINESS STATEMENT
“AFTER” PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

Phone Number: _____

E-mail Address: _____ Date: _____

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor’s Website pursuant to HRS §92-7?

Yes No

(If “Yes,” please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New Repeal Amendment Compilation

II. Will the proposed rule(s) affect small business?

Yes No (If “No,” no need to submit this form.)

* “Affect small business” is defined as “any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.” HRS §201M-1

* “Small business” is defined as a “for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii.” HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

Yes No

(If “Yes” no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

Yes No

(If “Yes” no need to submit this form.)

V. Please explain how the agency involved small business in the development of the proposed rules.

- a. **Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?**

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

2. A summary of the public's and small businesses' comments.

3. A summary of the agency's response to those comments.

4. The number of persons who:
 - (i) Attended the public hearing:
 - (ii) Testified at the hearing:
 - (iii) Submitted written comments:

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
 Yes **No**
 - (i) If "Yes," was the change adopted? **Yes** **No**
 - (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov
This statement may be found on the SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

Small Business Regulatory Review Board

MEETING MINUTES

August 15, 2024

ZOOM Meeting Recording

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

MEMBERS PRESENT:

- Jonathan Shick, Chair
- Mary Albitz, Vice Chair
- Sanford Morioka, 2nd Vice Chair
- Robert Cundiff
- James (Kimo) Lee
- Tessa Gomes
- Nikki Ige
- Mark Ritchie
- Garth Yamanaka

ABSENT MEMBERS:

STAFF: DBEDT

Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF July 26, 2024 MINUTES**

Vice Chair Mary Albitz motioned to approve the July 26, 2024 meeting minutes, as presented. Robert Cundiff seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Subchapter 4, Petitions for Intervention, promulgated by Kauai Planning Department (KPD) – County of Kauai

Discussion leader Nikki Ige introduces Jodi Higuchi Sayegusa, Deputy Director from the Kauai Planning Department (KPD), to discuss the proposed changes to the rules. Ms. Sayegusa explained that the Department of Planning will be coming back for various rules, both administratively and to implement certain ordinance updates. The first rules that needed to be focused on were internal departmental rules and one of the first rules that needed to be amended are the Planning Commission’s rules of practice and procedures.

Ms. Sayegusa stated that the rule change rose to the top because of litigation that was pending and became a pressing issue. KPD is faced with a lot of requests for intervention, which may be used as tactics against development rather than legitimate concerns. Some requests have tenuous relation to an actual injury. KPD has been working with their attorney's office, who revealed some updates to the law that require amendments to this chapter.

KPD believes the amendments clarify who may qualify to intervene in zoning permit decisions before the Planning Commission. Also, the amendment clarifies that intervention must be decided upon prior to the initiation of the public hearing for zoning permits. These amendments should result in a reduction on the impact to zoning permit applicants including small businesses as well as allow clarity for petitioners who seek to intervene.

The rules could impact small businesses to the extent small businesses are impacted by zoning permit applications and wish to be able to become a party/intervenor to advocate for their interests. In addition, small businesses may be impacted when third party intervenors wish to become involved in permit decision involving small businesses. The filing fee for a petition to intervene will increase from \$25 to a proposed \$300. Indirectly, the amendments will result in cost savings with greater clarity on who or how to file for petitions to intervene. Comparison with other jurisdictions (Maui has a \$828 petition filing fee) and a rough calculation of an average of over \$900 to process, file, distribute, and hear petitions to intervene between staff and Planning Commission.

Mr. Ritchie seeks clarification on the legal standing and potential harm related to a case. Mr. Ritchie is interested in understanding how a small business might be impacted by regulatory decisions and whether their legal counsel could be affected. Ms. Sayegusa explains that previously, to intervene legally, one had to prove a specific and distinguishable interest—either direct ownership, proximity to the land, or a unique concern not shared by the public. Ms. Sayegusa provides an example of how an environmental concern, such as dust from a nearby manufacturing business, could justify intervention if it directly affects the individual's property.

Ms. Ige discusses the need for checks and balances regarding activist groups filing petitions to intervene in cases. She notes that the low cost of filing can lead to excessive and potentially disruptive interventions, which can delay permit approvals for small businesses. She states that clarifying the rules can help ensure that petitions are relevant and more efficiently handled.

Mr. Ritchie then asks about the average permitting time on Kauai, indicating interest in understanding the impact of these issues on local permit processes. Ms. Sayegusa acknowledges the concern, highlighting that addressing the housing crisis is a priority for the county and provides an overview of permit processing times. For standard permits, if the application is complete, the turnaround is typically about three months. For discretionary permits handled by the Planning Commission, the process is longer, usually around one month, but can extend to one to three years if interventions occur. She also mentioned efforts to improve efficiency by collaborating with various departments like public works and engineering.

Mr. Yamanaka raises a concern about fees collected from permits being deposited into the general fund, suggesting it might be more effective to keep the funds within the department for better tracking and allocation. Ms. Sayegusa responds that currently, the department only retains funds for enforcement purposes and acknowledges the fees are generally low. She suggests that updating the fees to reflect current needs could be beneficial, as it would help with budgeting for additional staff and resources. Mr. Yamanaka agrees that the fees may be too low to adequately cover the costs of processing permits and supporting staff.

Ms. Sayegusa explains that the department only retains fees in a special fund for enforcement purposes. Other fees go to the General Fund. She mentions that current fees are low and that updating them might be necessary to better reflect today's needs, which would impact the budget for more staff. Mr. Yamanaka suggests that keeping fees separate from the General Fund might improve monitoring and efficiency. He also inquires about a non-refundable filing fee for petitions, questioning whether it should be reimbursed if a petition is denied. Ms. Sayegusa clarifies that the fee is non-refundable because administrative costs are incurred regardless of the petition's outcome.

Mr. Yamanaka suggests that increasing the fee for filing petitions and making it refundable could help deter non-valid interventions while still allowing legitimate concerns to be addressed. Mr. Cundiff supports this idea, emphasizing that a low fee can lead to numerous frivolous petitions, which delay the process and negatively impact small businesses. Both members propose that a higher fee might discourage unnecessary delays, but also suggest considering whether the fee should be refundable based on the validity of the intervention. Mr. Yamanaka adds that a balance is needed to avoid delays, which are costly for everyone involved.

Mark Ritchie motioned to pass the rules on to public hearing. Second Vice Chair Sanford Morioka seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 19 Subtitle 5 Motor Vehicle Safety Office, Chapter 152 State Highway Enforcement Program, promulgated by Department of Transportation

Although there is no apparent impact on small business, one potential impact may be, for example, if a landscaping company performing work on the highway is parked on the side of the highway and receives a violation for doing so. It was indicated that the new rule was prompted by alleged problems on the Island of Kauai where cars were illegally parked along state highways, specifically at state parks.

Ms. Laura Manuel, DOT's Highway Safety Specialist, was having technical difficulties and unable to unmute herself. She indicated to discussion leader Mr. James Lee that there were four attendees with no comments at the public hearing. The board members thanked her for attempting to log in and participate in the meeting.

COUNTY COUNCIL

Mel Rapozo, Chair
KipuKai Kualii, Vice Chair
Addison Bulosan
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Ross Kagawa



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Lyndon M. Yoshioka, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
Email: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihue, Kauai, Hawaii 96766

RECEIVED
By SBRRB at 8:27 am, Oct 10, 2024

September 12, 2024

Lieutenant Governor Sylvia Luke
State of Hawaii
Hawaii State Capitol
Honolulu, Hawaii 96813

SEP 12 '24 AM 10:52
PLANNING DEPT

Dear Lieutenant Governor Luke:

In compliance with Section 91-4, H.R.S., we are transmitting for your files, two copies of the *Amendments to the Rules of Practice and Procedure of the County of Kauai Planning Commission* which was adopted by the County of Kauai Planning Commission on September 10, 2024.

Upon your receipt of these rules, please send us a confirmation of receipt. Thank you.

Respectfully submitted,

JADE K. FOUNTAIN-TANIGAWA
County Clerk, County of Kauai

:xd

Enclosure

cc: County of Kauai Planning Commission w/ enclosure
Supreme Court Law Library, w/ enclosure

Subchapter 4 Intervention

- § 1-4-1 Applicability**
- § 1-4-2 Petition Filing**
- § 1-4-3 Contents of Petition to Intervene**
- § 1-4-4 Multiple Petitioners and Intervenors**
- § 1-4-5 Arguments For or Against Intervention**
- § 1-4-6 Action on Petition for Intervention**

SUBCHAPTER 4

PETITION TO INTERVENE

1-4-1 Applicability.

(a) All departments and agencies of the state and the county shall be admitted as parties upon timely application for intervention.

(b) A person who demonstrates an actual or threatened injury that is fairly traceable to the applicant's action, for which the Commission maintains authority to provide redress, may be admitted as Parties-Intervenors upon timely written application for intervention in conformity with these Rules.

(c) The Commission may deny an application to intervene when in the Commission's or Hearing Officer's sound discretion it appears that:

- (1) the position or interest of the applicant for intervention is substantially the same as a party-already admitted to the proceeding;
- (2) the admission of additional Parties-Intervenors will render the proceedings inefficient and unmanageable; or
- (3) the intervention will not aid in the development of a full record and will overly broaden issues.

(d) Upon admission of any intervenor, the Planning Department shall be automatically admitted as a party to the contested case.

(e) In no case shall intervention be allowed for appeals from actions of the Director pursuant to Subchapter 9 of these Rules, matters over which the Commission exercises only advisory functions, or the Planning Department exercises only ministerial functions.

1-4-2 Petition Filing.

(a) Petitions to intervene shall be in writing and conform with these Rules.

(b) The petition for intervention with Certificate of Service shall be filed with the Commission no less than seven (7) days prior to the first public hearing for which notice to the public has been published pursuant to law or no later than four (4) days prior to the first public hearing for matters that do not require notice by publication.

(c) Untimely petitions for intervention will not be accepted except for good cause or excusable neglect shown, but in no event will intervention be permitted after the Commission has taken the final vote on the matter. A finding of good cause or excusable neglect will depend upon the circumstances and will be determined at the discretion of the Commission.

- (1) Good cause is a sufficient reason beyond the control of the petitioner including acts of God.
- (2) Excusable neglect is due to extenuating circumstances within the control of the petitioner. Carelessness, ignorance of the rules, and deliberate or willful conduct do not constitute excusable neglect.

(d) A Certificate of Service shall verify and attest that all papers filed with the petition for intervention were served upon the applicant, Office of the County Attorney, and Planning Department in accordance with Section 1-3-3 of these Rules.

(e) Petitions for intervention shall be accompanied by a non-refundable filing and processing fee of \$300.00. In the event the petition for intervention is denied, such fees shall not be reimbursed.

1-4-3 Contents of Petition to Intervene.

(a) The petition shall contain the following:

- (1) The nature of Petitioner's statutory or other right;
- (2) The nature and extent of petitioner's interest and if an affected property owner, provide the Tax Map Key description of the affected property;
- (3) The specific issues to be raised or contested by the Petitioner in the Contested Case hearing; and
- (4) The effects of any decision in the Proceeding on Petitioner's interest.

(b) If applicable, the petition shall also refer to the following:

- (1) Other means available whereby Petitioner's interest may be protected;
- (2) Extent Petitioner's interest may be represented by existing parties;
- (3) Extent Petitioner's interest in Proceeding differs from that of the

other parties;

- (4) Extent Petitioner's participation can assist in, development of a complete record;
- (5) Extent Petitioner's participation will broaden the issue or delay the Proceeding; and
- (6) How the Petitioner's intervention would serve the public interest.

1-4-4 Multiple Petitioners and Intervenors.

(a) Multiple Petitioners. Petitioners deemed by the Commission to have similar intervention requests may be consolidated as a single Party represented by a single counsel or agent.

(b) Multiple Intervenors. If more than one intervenor is admitted to a contested case proceeding, the Hearing Officer or Commission may require intervenors to assign responsibilities between themselves for the examination and cross-examination of witnesses. The Hearing Officer or Commission shall have the right to impose reasonable subject matter limitations and time limitations on examination and cross-examination of witnesses, whether parties are represented by counsel.

1-4-5 Arguments For or Against Intervention.

(a) The petitioner shall be given an opportunity to argue on behalf of the petition to the Commission. The other parties shall then be given an opportunity to comment on or oppose the petition.

(b) If any party opposes the petition for intervention, the party shall file their motion opposing the petition as soon as practicable or state the objections for the record.

1-4-6 Action on Petition for Intervention.

(a) All petitions to intervene or in opposition to such intervention shall be reviewed and a decision rendered by the Commission prior to the commencement of the first public hearing.

(b) The Commission shall issue a written decision upon its denial of a petition for intervention.

(c) A person whose petition to intervene has been denied may appeal such denial to the circuit court pursuant to chapter 91-14, HRS, as amended.


**AMENDMENT TO THE RULES OF PRACTICE AND PROCEDURE OF THE KAUAI COUNTY
PLANNING COMMISSION, CHAPTER 4 RELATING TO PETITIONS TO INTERVENE**

Amendment to the Rules of Practice and Procedure of the Kauai County Planning Commission, Chapter 4 Petitions to Intervene were adopted by a vote of 5 to 0, with 2 absent members of the Planning Commission of the County of Kaua'i, State of Hawai'i at its meeting held on the 10th day of September, 2024 as follows:

FOR	AGAINST	ABSTAIN/ABSENT
Gerald Ako, Helen Cox, Francis DeGracia, Jerry Ornellas, Lori Otsuka		Donna Apisa, Glenda Nogami Streufert

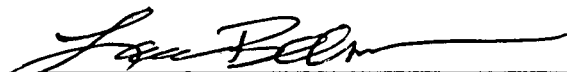
The amendments shall become effective ten (10) days upon filing with the County Clerk of the County of Kauai.

BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUA'I, STATE OF HAWAII.




 Gerald Ako, Vice Chair

APPROVED AS TO FORM AND LEGALITY:



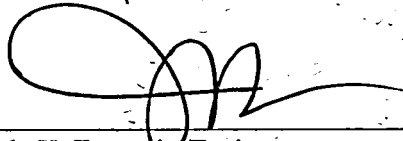
 Laura Barzilai
 Deputy County Attorney

APPROVED THIS 11th DAY OF ~~September~~, 2024



 Derek S.K. Kawakami
 Mayor of the County of Kauai

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 12th DAY OF ~~September~~, 2024.



 Jade K. Fountain-Tanigawa
 County Clerk

IV. Legislative Matters

A. Discussion and Action on Proposed Legislation Relating to the Small Business Regulatory Review Board – Clarifies requirements to establish a quorum to do business and validate acts of the Small Business Regulatory Review Board

____.B. NO. _____

A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 201M-5, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) A majority of all the members [~~to which the board is~~
4 ~~entitled~~] currently serving on the board shall constitute a
5 quorum to do business, and the concurrence of a majority of all
6 the members [~~to which the board is entitled~~] currently serving
7 on the board shall be necessary to make any action of the board
8 valid[-]; provided that at least five members are necessary to
9 constitute a quorum to do business and validate any action of
10 the board."

11 SECTION 2. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 3. This Act shall take effect upon its approval.

14

15

INTRODUCED BY: _____

16

BY REQUEST

____.B. NO.____

Report Title:

SBRRB; Small Business; Quorum Requirements

Description:

Amends the quorum requirements to do business and validate acts of the Small Business Regulatory Review Board.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO THE SMALL
BUSINESS REGULATORY REVIEW BOARD.

PURPOSE: To amend the quorum requirements to do
business and validate acts of the Small
Business Regulatory Review Board (SBRRB) to
account for vacancies.

MEANS: Amend section 201M-5(d), Hawaii Revised
Statutes (HRS).

JUSTIFICATION: The SBRRB has had trouble meeting current
quorum requirements due to vacancies. This
bill will allow a majority of the SBRRB's
currently appointed members to constitute a
quorum to do business and take official
action.

Impact on the public: Authorizing business
to be conducted and actions to be validated
by the majority of actual members will allow
the SBRRB to function without interruption
and thus benefit small business owners.

Impact on the department and other agencies:
Having a flexible quorum requirement that
accounts for vacancies will reduce potential
delays in the rulemaking process caused by
meeting cancellations due to a lack of
quorum.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED-142.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.

V. Administrative Matters

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

1. Discussion of location for the 2025 Small Business Regulatory Review Board meetings – *No attachment*
2. Update and Discussion on Becker Communications Inc., regarding the Board's Small Business Outreach – *No Attachment*
3. Presentations to Industry Associations – *No Attachment*
4. Staff's Small Business Outreach – *No Attachment*