



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
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

### AGENDA

Wednesday, September 16, 2015 ★ 1:00 p.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436 – Honolulu, Hawaii

David Y. Ige  
Governor

Luis P. Salaveria  
DBEDT Director

#### Members

Anthony Borge  
Chairperson  
Oahu

Harris Nakamoto  
Vice Chairperson  
Oahu

Barbara Bennett  
2<sup>nd</sup> Vice Chairperson  
Kauai

Kyoko Y. Kimura  
Maui

Robert Cundiff  
Oahu

Nancy Atmospera-Walch  
Oahu

Phillip Kasper  
Maui

Garth Yamanaka  
Hawaii

Director, DBEDT  
Voting Ex Officio

#### I. Call to Order

#### II. Approval of August 19, 2015 Meeting Minutes

#### III. Old Business

- A. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 16, Chapter 78, "**Cosmetology**," and the Small Business Statement After Public Hearing, promulgated by Department of Commerce and Consumer Affairs – *attached and incorporated as Exhibit 1*

#### IV. New Business

- A. Discussion and Action on Proposed Amendments to Chapter 23, "**Commercial Boating Activities**," Article 3, Kauai County Code 1987, Part IV, Section 33 "**Time of Use**," and Part IV "**General Conditions**," Sections 36(f), 36(u) and 36(v)," promulgated by County of Kauai Department of Parks and Recreation – *attached and incorporated as Exhibit 2*
- B. Discussion and Action on Proposed Amendments to Title 3, Subtitle 6, Chapter 80, General Provisions, Section 1.1, "**Definitions**," for new definition of "**Dancing**," promulgated by City and County of Honolulu - Honolulu Liquor Commission – *attached and incorporated as Exhibit 3*
- C. Discussion and Action on Proposed Amendments to Title 08, Subtitle 01, Chapter 101, "Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui," Subchapter 1, General Provisions, Section 5, "**Definitions**," for new definition of "**Dancing**," promulgated by County of Maui Department of Liquor Control Services – *attached and incorporated as Exhibit 4*
- D. Discussion and Action on Proposed Amendments to Rules & Regulations 1.1, "**Definitions**," for new definition of "**Dancing**," promulgated by County of Kauai Department of Liquor Control – *attached and incorporated as Exhibit 5*
- E. Discussion and Action on Proposed New Rule, Part 5, "**Facilities Reserve Charge**," promulgated by County of Kauai Department of Water – *attached and incorporated as Exhibit 6*
- F. Discussion and Action on Proposed New Rule, HAR Title 13, Chapter 86.1, "**Sea Cucumber Management**," promulgated by Department of Land and Natural Resources – *attached and incorporated as Exhibit 7*

**V. Administrative Matters**

A. Discussion of Board's On-Going Outreach Efforts, in accordance with Chapter 201M, Hawaii Revised Statutes

**VI. Next Meeting:** Scheduled for Wednesday, October 21, 2015, at 1:00 p.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

**VII. Adjournment**

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.



# September 16, 2015 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair <i>(T) (En) (P)</i>	NA	Oahu	Parking Pass	✓
Barbara Bennett, 2nd Vice Chair <i>(T) (En) (P)</i>	HA	Kauai	Parking Pass	✓
Kyoko Kimura <i>(T) (En) (P)</i>	HA	Maui	Parking Pass	✓
Harris Nakamoto, Vice Chair <i>(En)</i>	NA	Oahu	NA	✓
Director's ex officio - Mark Richey	NA	Oahu	NA	✓
Robert Cundiff <i>(En) (P)</i>	NA	Oahu	Parking Pass	✓
Nancy Atmospera-Walch <i>(En)</i>	NA	Oahu	NA	✓
Phillip Kasper <i>(T) (En) (P)</i>	HA	Maui	Parking Pass	✓
Garth Yamanaka <i>(T) (En) (P)</i>	HA	B.I.	Parking Pass	✓
<i>Add to Chair's Agenda, Before "na Affair", Public Hearing</i>				

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 12 - 15 copies of rule packages for board packets	✓
Poll board attendance	✓
Prepare TAF's for Director's approval - ASAP (Linda) <i>Done Barb. Kyoko Smith Phil ✓</i>	✓ Done
Airline booking ASAP - Linda <i>Barb, Kyoko Smith, Phil ✓</i>	✓ Done
Draft Agenda to Chair for approval	✓
Post approved agenda on 1) SBRRB website, 2) State Calendar, 3) Lte. Governor's Office	✓✓✓ Done
Send Agendas to those people who requested it - IMPORTANT	✓ Done
Mail Board Packets to Board members, Deputy AG <i>Neighbor Islands ✓ Other</i>	✓ Done
Include "discussion leader" names on the agendas to Board members only.	✓ Done
Photographer - Contact David H. - Don't Forget! <i>Remember Em</i>	✓
Include parking permits in Board members' agenda packets.	✓ Done

STAFF				
Margaret Ahn <i>(En)</i>				✓ Yes
Dori Palcovich				✓ Yes

Post Meeting Checklist	



FW: Kauai Department of Water - Small Business Regulatory Review Board re: Facilities Reserve Charge

Anthony Borge

to:

'Dori Palcovich'

09/16/2015 07:55 AM

Hide Details

From: "Anthony Borge" <tony@rmasalesco.com>

To: "'Dori Palcovich'" <DPalcovi@dbedt.hawaii.gov>

History: This message has been replied to and forwarded.

Dori,

Another testimony for today's meeting.

Thank you.

Tony

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**From:** Shigemoto, Tom at Kukui'ula [<mailto:tshigemoto@abprop.com>]

**Sent:** Tuesday, September 15, 2015 6:32 PM

**To:** tony@rmasalesco.com

**Subject:** Kauai Department of Water - Small Business Regulatory Review Board re: Facilities Reserve Charge

Dear Mr. Borge,

My name is Tom Shigemoto, Vice President of A&B Properties, Inc., Kauai. I am writing you to clarify some of the misconceptions and/or misrepresentations presented in the Kauai Department of Water's justification for its proposed rule amendments on the Facilities Reserve Charge (FRC).

Item 1. i. – Modification of FRC. DOW states, "Small businesses that are focused on land development will be impacted by the proposed rule. All new customers of the Department will bear the cost of the FRC..." Why do only new customers have to bear the brunt of the costs to upgrade the Department's failing water system. If improvements are necessary for a neighborhood, district or region, shouldn't all properties which stand to benefit from such improvements pay? When FRC funds are collected for new developments or from new customers irrespective of whether water improvements are installed, is there a methodology to ensure the money collected is used to improve the system in that area? Perhaps the DOW should explore community facilities districts to make assessments more equitable.

Page 2, Item 1. iii. – Modification of FRC Offset. The proposed rule change reduces the percentages of the offset for water source improvements, but increases the offsets for storage and transmission facilities. The current offsets are the same 33% each for source, storage and transmission. No detailed explanation is provided for the changes. Furthermore, source development is probably the costliest of the three. For anyone who is required to provide source, storage and/or transmission the offset should be guided by the rule below. The offsets should be 100 % and not a fraction of what it cost the developer/landowner put in for the benefit of not only his development but for others that are serviced by the improvements that are built.

Page 3, Item 1. iv. – Establishment of Total FRC Offsets. - This rule change is fair for any developer/landowner/small business owner to be able to get 100% back in the form of the FRC amounts.

Page 5, Item 2. c. i. – Modification of Facilities Reserve Charges. – The DOW uses A&B's Kukui'ula Development Company's project in south Kauai as an example of how it determined a FRC of \$17,300 per unit. What the Department doesn't mention is that the development chose to purposely keep densities well below levels of densities that could be built there. Yes at 1500 units, the FRC costs per unit is approximately \$17,000. But, if the



project developed to its full density potential of approximately 4000 units, the per unit FRC cost would amount to \$6500. Therefore, using the Kukui`ula Development to justify or rationalize a \$14,000 increase is misleading.

Finally, Page 8, item No. 7 of Exhibit 6, my name is mentioned as one of several members of the business community that provided input for the subject rule change. As best as I can recall the DOW did not meet individually or collectively with whom I will call large land owners/developers to discuss the ramifications of the proposed rule change. I know I attended a public informational meeting where the proposed changes were explained and the justification for the amendments about three years ago. At that time, as I recall, the increase was from \$4600 to \$17,000. The proposed increase is down to \$14,115, a 307% increase over the current FRC. I remember mentioning that I understand that the FRC could and should be increased but perhaps doing it in increments over several years would be more palatable instead of the large increase. I also did express my opposition to such a huge increase as it will have a tremendous impact to all small businesses and consumers. After the string of informational meetings I did not hear anything else about the increase nor was I a part of any meeting to discuss the matter. The Water Board may have held public hearings on the subject so I may have missed that opportunity to express my opposition to the increases.

As the DOW mentions in item 7, "The most prominent small businesses that will bear the direct impact of the changes in the FRC fee schedule will be land developers, more particularly those that deal with development of housing." I don't consider my company a small business but as a real estate development company, A&B Properties, Inc. does develop not only primary housing but affordable housing as well. In a situation where excess costs are levied on our projects, they will be passed on our consumers. This is the bigger impact of increasing the FRC, not only for people wishing to own their own homes and not being able to qualify, but for all consumers retail and wholesale who have to assume the costly increases. Units which have to be priced out of the market demand will force developers to reduce or even abandon projects, causing a trickling effect of secondary impacts to design consultants and construction workers reducing their purchasing power, which will affect wholesale and retail businesses on this island.

We need an adequate supply of clean, safe, water resources. We understand the need to increase water rates and FRC charges. All we ask for is that increases are done with the consideration of the impacts such rate and charges will have on our very fragile island economy. Thank you.



## Kauai Board of REALTORS®

4359 Kukui Grove Street #103

Lihue, HI 96766

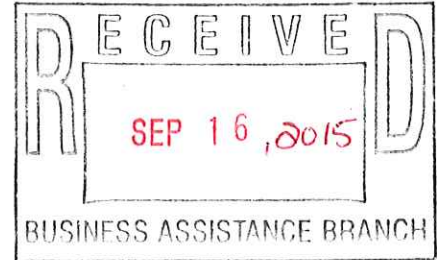
Phone: 808.245.4049

Fax: 808.246.0409

E-mail: [kbr@kauaiboard.com](mailto:kbr@kauaiboard.com)

September 15, 2015

Mr. Anthony Borge, Chair  
Small Business Regulatory Review Board  
c/o RMA Sales  
99-134 Waiua Way  
Aiea, HI 96701



RE: Exhibit 6 to the Small Business Regulatory Review Board from the Kauai County Department of Water.

Aloha Chair Borge:

As the Executive Officer noted in the Department of Waters Summary report as attending meetings and focus group discussions during the drafting of the proposed rules, I need to clarify our participation as stated on Page 8, Item 7. Both Ms. F. Lee Morey, KBR President at that time, and I attended the public meetings during David Craddick's employment as the Manager of the Department of Water. During the public meetings, a lot of focus was placed on the horizontal drilling with little discussion on the proposed (at that time) \$17,000+ FRC increase. At that time, we reiterated the concern about the ability for our developers, homeowners and residents with such a high increase to be paid at the time the permit was being issued.

There were concerns and suggestions that were provided at these public meetings, that I don't see being in the report.

As one of the trade organizations involved in the housing market, I am volunteering the REALTOR Organization to sit down with the decision makers to find a solution or alternate solutions without a 300+% increase at once.

Sincerely,

KAREN ONO  
Executive Officer



# CONTRACTORS ASSOCIATION OF KAUAI

4231 Ahukini Road • Lihue, Kauai, Hawaii 96766  
Phone: (808) 246-2662 • Fax: (808) 246-8642



September 14, 2015

Mr. Anthony Borge, Chair  
Small Business Regulatory Review Board  
c/o RMA Sales  
99-134 Waiua Way  
Aiea, HI 96701

Dear Chair Borge:

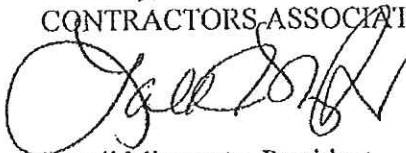
*RE: Exhibit 6 to the Small Business Regulatory Review Board  
from the Kauai County Department of Water*

The Contractors Association of Kauai's (CAK) Board of Directors would like to clarify an issue on Page 8, #7 of Exhibit 6 from the Kauai County Department of Water (DOW) relating to the proposed new rule on "Facilities Reserve Charge." CAK has not had dialog with the Department of Water on the Facilities Reserve Charge issue in the last three years. However, the CAK Board of Directors invited Kirk Saiki, Manager and Chief Engineer of the Kauai Department of Water to its next regularly scheduled board meeting later this month to have an update and dialog on this issue.

There were a number of concerns raised when the original proposed rules were discussed with the CAK Board of Directors, but the current Board is not aware if there were any changes made as a result of the concerns raised.

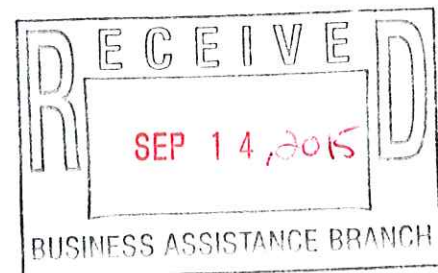
Thank you for allowing the Contractors Association of Kauai to provide clarification on the Facilities Reserve Charge issue. If you have any questions please contact our Executive Director at 1-808-246-2662.

Sincerely,  
CONTRACTORS ASSOCIATION OF KAUAI



Lanell Miyamoto, President

xc: CAK Board of Directors  
Karen Taketa, Executive Director



# Exhibit 1



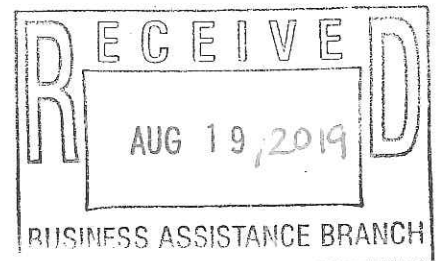
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment to Chapter 16-78  
Hawaii Administrative Rules

July 13, 2015

SUMMARY

1. §16-78-2 is amended.
2. §16-78-9 is amended.



Amendments to Chapter 16-78  
Hawaii Administrative Rules

§16-78-2 Definitions.

“Beauty school”, unless the context clearly indicates otherwise, means a postsecondary school engaged in teaching cosmetology.

“Postsecondary” means beyond the education equivalent to the completion of high school or grade twelve. [Eff 7/4/64; am ] (Auth: HRS §438-5) (Imp: HRS §439-1)



§16-78-59 Enrollment. (a) The number of students shall be small enough to permit an effective educational program. The number of students shall be set so that the total of students, patrons, and faculty does not exceed the occupancy requirements of the State board of health and the building department of the county in which the school is located.

(b) A beauty school shall enroll only students who are at least sixteen years of age and who have an education equivalent to the completion of high school or grade twelve. [Eff 9/9/66; am ] (Auth: HRS §439-18) (Imp: HRS §439-18)

Amendments to chapter 16-78, Hawaii Administrative Rules, on the Summary page dated July 13, 2015, were adopted on July 13, 2015, following a public hearing held on the same date, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, West Hawaii Today, and The Maui News on May 29, 2015.


These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
\_\_\_\_\_  
LANCE M. MARUGAME, Chairperson  
Board of Barbering and Cosmetology

APPROVED AS TO FORM: Date 8/10/15

  
\_\_\_\_\_  
Deputy Attorney General

APPROVED: Date 8/14/2015

  
\_\_\_\_\_  
CATHERINE P. AWAKUNI COLÓN, Director  
Commerce and Consumer Affairs

APPROVED: Date \_\_\_\_\_

\_\_\_\_\_  
DAVID Y. IGE  
Governor  
State of Hawaii

\_\_\_\_\_  
File



## Exhibit 2

Recommended Park's Rule Amendments in Modified Ramseyer Format

Rules and Regulations Governing Commercial Boating Activities

Part IV, Section 33, of the Department of Parks and Recreation Rules and Regulations Governing Commercial Boating Activities At County Beach Parks is amended to read as follows:

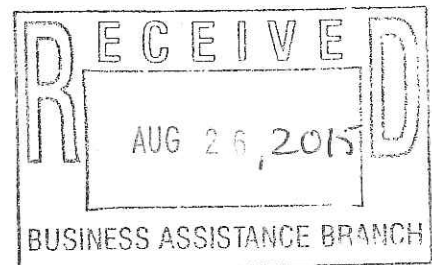
"Section 33. Time of Use.

~~[(a) No commercial boating activities shall occur within the County parks on Sundays.]~~

~~[(b)]~~ (a) Permittees shall limit their commercial boating and accessory activities within the County parks between the hours of 7:00 a.m. and 7:00 p.m.

~~[(c)]~~ (b) Special events authorized by permit shall take precedence over commercial boating activities allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.

~~[(d)]~~ (c) At the Director's discretion, no commercial boating activities shall occur within the County parks during periods when maintenance or repair of County beach park property or equipment is being performed or when a park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities."



## Recommended Park's Rule Amendments in Modified Ramseyer Format

Part IV, Section 36(f), of the Department of Parks and Recreation Rules and Regulations Governing Commercial Boating Activities at County Beach Parks is amended to read as follows:

"(f) Vehicles used for commercial boating activities shall not be driven onto or be parked in any County beach area. All customers and/or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and or ~~instructors~~ employees shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for period not exceeding thirty minutes. All vehicles used for shuttling instructors and/or customers shall clearly indicate that they are owned and or operated in behalf of the permittee and shall further display the permit issued by the department allowing the shuttling to take place. The following areas are designated by the Department as loading and unloading areas:

- 1) Weke Road Boat Ramp TMK 4-5-5-001:999
- 2) In the event the Hanalei River mouth is blocked, customers and/or employees will be allowed to walk along the river side of Hanalei/Blackpot Park and load/unload at the river mouth sand spit."



Recommended Park's Rule Amendments in Modified Ramseyer Format

Section 36. General Conditions

~~" [(u) Permittee failing to perform in accordance with the conditions of these rules and regulations shall forfeit any further use of an existing permit and will not be allowed to apply in person, member of a firm, corporation, or entity for a period of two-years from the date of failure to perform.]~~

~~[(v)]~~ (u) Non-compliance with any and all terms and conditions of this agreement shall subject the permit holder to civil fines of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00) for each offense. Repeated non-compliance shall ~~[automatically]~~ render this agreement null and void, and the permittee shall be required to cease and desist all commercial operation immediately upon notification by the Department."

(v) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation."

## Exhibit 3

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Liquor Commission of the City and County of Honolulu will hold a public hearing in the hearings room of the Liquor Commission, Pacific Park Plaza Building, 711 Kapiolani Boulevard, Suite 600, Honolulu, Hawaii, on Thursday, October 8, 2015, at 4:00 p.m., to consider the adoption of an amendment to the Rules of the Liquor Commission of the City and County of Honolulu.

The purpose of the proposed amendment is to comply with the requirements of Act 136, Session Laws of Hawaii 2015, which requires the Liquor Commission to provide a definition of "dancing" as it pertains to customer dancing in premises licensed to sell liquor for consumption therein. The proposed new definition of "dancing" to be added to Rule §3-80-1.1 is set forth below:

### **§3-80-1.1. Definitions.**

"Dancing", as it pertains to a customer on the licensed premises, means the movement of the customer's body in a way that goes with the rhythm and style of music that is being played.

Those persons wishing to testify at this hearing may register prior to the hearing at the hearing site and are encouraged to submit one copy of their testimony by hand delivery, fax, mail, or email. Attendance at the public hearing is not a prerequisite for submission of testimony. Written testimony that is received by 4:30 p.m., Wednesday, October 7, 2015 at the below address by hand delivery, fax, mail, or email will be included with the record of the hearing.

Address and contact information: Liquor Commission  
Pacific Park Plaza Building  
711 Kapiolani Boulevard, Suite 600  
Honolulu, Hawaii 96813  
(808) 768-7311 (fax)  
[liquor@honolulu.gov](mailto:liquor@honolulu.gov) (email)

A copy of Act 136, Session Laws of Hawaii 2015, will be mailed at no cost to persons who call (808) 768-7355 and provide their name and mailing address. Copies are also available at no cost and may be reviewed in person at the Liquor Commission offices, Pacific Park Plaza, 711 Kapiolani Boulevard, Suite 600, Honolulu, Hawaii, Monday through Friday between 7:45 a.m. and 4:30 p.m., and on the Liquor Commission website at [www.honolulu.gov/liq](http://www.honolulu.gov/liq).

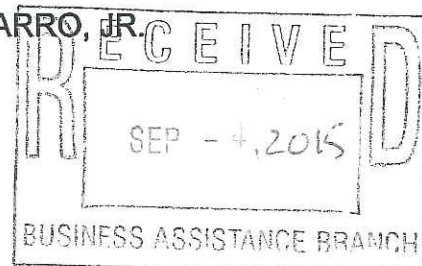
If you require an accommodation or auxiliary aid and/or services to participate in this meeting (i.e., sign language or foreign language interpreter), please call the Administrative Services Officer at 768-7308 at least 72 hours prior to the meeting.

Dated: August 31, 2015

LIQUOR COMMISSION OF THE  
CITY AND COUNTY OF HONOLULU  
MICHAEL S. YAMAGUCHI, Chairman

By FRANKLIN DON PACARRO, JR.  
Administrator

HONOLULU STAR-ADVERTISER  
Publication date: September 3, 2015



## Exhibit 4



Amendment to Title 08, Chapter 101,  
Rules Governing the Manufacture and Sale  
of Intoxicating Liquor of the County of Maui

1. Section 08-101-5, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding a new definition to read as follows:

"Dancing" means to move your body in a way that goes with the rhythm and style of music that is being played. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)

2. New material is underscored.

3. Addition to update source note to reflect the amendment is not underscored.

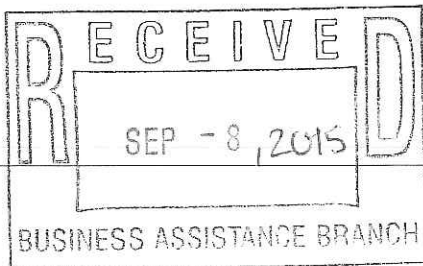
4. This amendment to Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, shall take effect ten days after filing with the Office of the County Clerk.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015, at  
Wailuku, Maui, Hawaii.

By \_\_\_\_\_  
ROBERT TANAKA  
Chairperson  
LIQUOR COMMISSION

Approved this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
ALAN M. ARAKAWA  
Mayor, County of Maui



APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
EDWARD S. KUSHI, JR.  
First Deputy Corporation Counsel  
County of Maui

Received this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Clerk, County of Maui

CERTIFICATION

I, ROBERT TANAKA, Chair, Department of Liquor Control, County of Maui, do hereby certify:

1. That the foregoing is a copy of the Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by affirmative vote of the proper majority following a public hearing on \_\_\_\_\_, 20\_\_; and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing amendment to the rules was published in The Maui News on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

COUNTY OF MAUI

\_\_\_\_\_  
ROBERT TANAKA  
Chairperson  
LIQUOR COMMISSION

2015-4535

NOTICE OF PUBLIC HEARING

Pursuant to Chapters 91 and 92, Hawaii Revised Statutes, the County of Maui Liquor Commission ("Liquor Commission"), hereby provides notice of public hearing for the purpose of amending a certain subsection of the Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui. The proposed amendment relates to the establishment of a new definition of dancing.

The relevant provision contained in the proposed amendment is:

§08-101-5 Definitions

"Dancing" means to move your body in a way that goes with the rhythm and style of music that is being played.

A copy of the proposed amendment may be viewed or downloaded from the Department of Liquor Control web page at [www.mauicount.gov/liquor](http://www.mauicount.gov/liquor) and selecting the Rules/Laws tab.

A copy of the proposed amendment will be mailed to any interested person who requests a copy and pays the required fees for copying and postage. Requests for a copy may be made at the Department of Liquor Control, 2145 Kaohu Street, Room 105, Wailuku, Hawaii 96793, or by calling (808)244-4666.

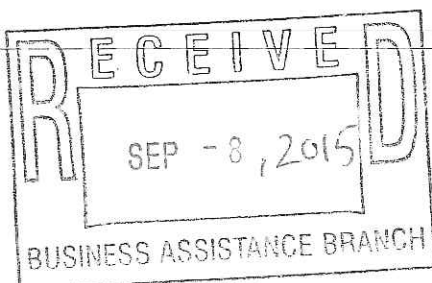
The Liquor Commission will conduct a public hearing on the proposed amendment on October 7, 2015 at 10:00 am at the Department of Liquor Control Conference Room, 2145 Kaohu Street, Wailuku, Hawaii.

Any interested person may submit oral or written testimony on the proposed rules at the public hearing. Also, written testimony may be submitted by mail to: Liquor Commission, 2145 Kaohu Street, Room 105, Wailuku, Maui, Hawaii 96793, before October 7, 2015.

Any person requesting accommodations due to disabilities must call (808) 244-4666 at least six (6) days before the date of the scheduled public hearing.

Call the Commission Secretary at (808)244-4666 if further information is needed.

By: \_\_\_\_\_  
ROBERT TANAKA  
Chair  
Liquor Commission





## Exhibit 5

**Bernard P. Carvalho, Jr.**  
Mayor



**Gerald T. Rapozo**  
Director

**Nadine K. Nakamura**  
Managing Director

**DEPARTMENT OF LIQUOR CONTROL**  
**County of Kaua'i, State of Hawai'i**  
4444 Rice Street, Suite 120, Lihu'e, Hawai'i 96766  
TEL (808) 241-4966 FAX (808) 241-6585

September 2, 2015

Anthony Borge, Chair  
Small Business Regulatory Review Board  
Department of Business, Economic Development & Tourism  
No. 1 Capitol District Building  
250 South Hotel Street  
Honolulu, Hawai'i 96813

Chair Borge and Members of the Small Business Regulatory Review Board:


The Liquor Control Commission of the County of Kauai proposes to amend the Rules & Regulations of the Liquor Control Commission by defining dancing.

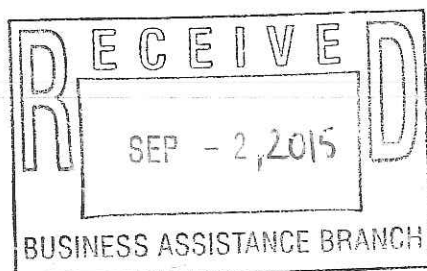
Act 136 (2015) requires the liquor commissions to define dancing by October 1, 2015. For the County of Kauai, we propose to define dancing as "to move your body in a way that goes with the rhythm and style of music that is being played". The definition was taken directly from Merriam-Webster's dictionary.

I have also submitted the Pre-Public Hearing Small Business Impact Statement for your perusal. Please don't hesitate to call me if you have any questions at 808-241-4969.

Thank-you for your assistance in this matter.

Sincerely,

  
Gerald T. Rapozo  
Director



RULES AND REGULATIONS OF THE LIQUOR CONTROL COMMISSION  
COUNTY OF KAUAI

**RULE 1**  
**DEFINITIONS**

**Rule 1.1. Definitions.** Words used in these rules and regulations in the singular include the plural, and vice versa; words of any gender include any other gender. Words defined in Section 281-1, Hawaii Revised Statutes, as amended, shall have the same meaning wherever used herein.

"Application" means the application or the required forms used in making the request and any information contained therein for liquor license, renewal, or transfer thereof, a permit or the amendment of restrictions or conditions placed on a license or for any other request or petition and shall include and not be limited to any affidavit or document filed by the applicant in connection with such application, oral statement to the commission, the required necessary documentation, and any other forms or documents which may be prescribed from time to time by the commission.

"Applicant" means a person who has filed any application for a permit, management agreement, liquor license, or its like, for consideration by the Department or Commission.

"Blue card" means a card issued by the department to a person 21 years of age or older who has scored at least 85% on a written exam administered by the department for an on-premises establishment.

"Complimentary drink(s)" means individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill, which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Customer" means any person other than an on-duty employee of that licensee.

"dBA" means a unit for measuring sound level of all noises as measured with a sound level meter using the "A" weighting network.

"Department" means the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Decibels" means the unit for measuring the volume of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure to the sound measured to the reference pressure, which is 20 micropascals (0.0002 dynes per square centimeter).

"Director" means the director of the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Employee" shall include the licensee and all other persons who perform any type of activity, whether compensated or not, in conjunction with the operation, maintenance, or management of the licensed premises, including but not limited to the dispensing, serving, or selling of liquor, directly or indirectly, or who shall assist in the dispensing, serving, or selling of liquor, or who shall manage or



supervise, directly or indirectly, any person who shall dispense, serve, or sell liquor. Any person who performs, whether compensated or not, any act or function as defined above, shall be considered "on duty".

"Entertainer" means any person who performs a service usually or normally done, on or within licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated.

"Lap dancing" means any form of physical contact where a person's torso makes contact or is rubbed against another simulating sexual contact.

"Manager" means any person who has a valid blue or red card and who is registered as a manager or assistant manager by the licensee.

"Non-standard bar" means an on premise license that is authorized to have live entertainment with or without dancing by patrons.

"Off premises license, licensee, or establishment" means a retail dealer, license, licensee, or business.

"On premises license, licensee, or establishment" means any license, licensee, or business authorized to sell liquor for consumption on the premises.

"Private party" means a gathering of persons for a special occasion; such as a wedding, an anniversary, a luau, etc., where food and drinks are served.

"Red Card" means a card issued by the department to a person 21 years of age or older who has scored at least 85% on a written exam administered by the department for an off-premises establishment.

"Showroom Facility" is defined as a location having a staged performance with seated guests.

"Strip show," means a burlesque act in which a performer removes his or her clothing piece by piece.

"Unreasonable noise" means noise emanating from liquor-licensed premises that exceed the maximum allowable decibel level as prescribed in rule 7.4(b).

## RULE 2 RULES OF PRACTICE AND PROCEDURE

**Rule 2.1. Methods whereby public may obtain information.** The public may obtain information as to matters within the jurisdiction of the commission by inquiring at the office of the County Clerk of the County of Kauai, State of Hawaii, where there are on file all rules of the commission; or at the department. All rules, orders, or opinions of the commission are on file and available for public inspection at said office, copies of compilations of rules and supplements thereto are available to the public at a price to be fixed by the County Council to cover mailing and publication costs.

Such inquiry may be made in person at said office during business hours, or by submitting a



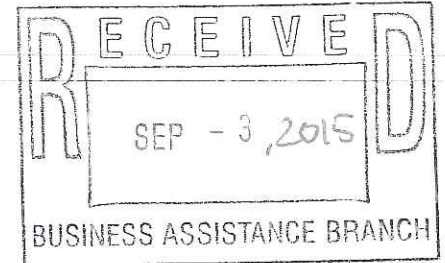
## Exhibit 6

# DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

August 2015



**SUMMARY OF THE PROPOSED RULE AMENDMENT:** Facilities Reserve Charge (more commonly known as impact fees) are fees assessed by the Kaua'i County Board of Water Supply on new water users/uses to pay for their portion of the costs associated with expanding the water system to accommodate said new uses. The rules before the SBRRB are a result of years of effort by Department of Water and the Board of Water Supply to find the most equitable means of assessing the fees upon new users. The new fees are based upon a fee study conducted, in accordance with Hawaii Revised Statutes, by a third party consultant that analyzed the costs of the expansion portions of the Department's CIP plan, and broke those costs down accordingly. That fee study can be found at [kauaiwater.org](http://kauaiwater.org).

The proposed rule amendment is attached hereto as Attachment "A". Below is a summary of the proposed changes:

- a) Modification of Facilities Reserve Charge (FRC). The rules currently require that a one-time charge be assessed against all new customers who desire water system service from the Department. This charge, called a Facilities Reserve Charge or "FRC", is intended to recover the Department's cost of providing water system service to new developments. In the proposed rule, the fee is raised significantly from the current rate and more closely reflects actual costs incurred by the Department to expand the system.
  - b) Establishment of Time Period to Install Water Meter. Presently, developers that are approved for water service have no time limit to install their water meter. The proposed rule amendment provides guidelines that require developers to install approved water meters within a certain time period
  - c) Modification of FRC Offset. This proposed rule change modifies the percentage of FRC Offset that can be allowed for specific source or storage or off-site transmission facilities that are constructed by developers to more accurately reflect the proportionate costs of each component of the system.
  - d) Establishment of Total FRC Offsets. The rules currently allow FRC Offsets for certain source or storage or off-site transmission facilities up to the amount of the present FRC Offset percentage. The proposed rule allows a developer to receive FRC off-set for the entire FRC liability amount per category of source or storage or off-site transmission improvements if the applicant constructs all of the source or storage or off-site transmission facilities for their development.
  - e) Establishment of Grant Funds Offsets. The proposed rule amendment provides the developer the opportunity to pursue grant funds for projects which can be used to Offset the projects FRC liability.
1. *Description of the small businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules, that are required to comply with the proposed rules, and how they may be adversely affected.*
- i. Modification of Facilities Reserve Charges (FRC). The proposed rule modifies the charges that apply to those individuals or businesses needing new water meter

service on property not previously served by the Department, or for any individuals or businesses that need to increase the size of their existing water meter. Small businesses that are focused on land development will be impacted by the proposed rule. All new customers of the Department will bear the cost of the FRC, as well as the benefit of being able to obtain County potable water meter service.

The most prominent small businesses that will bear the direct impact of the changes in the FRC fee schedule will be land developers, more particularly those that deal with development of housing. The fee increase for the s typical residential 5/8-inch water meter is increased by 300% from \$4,600 to \$14,115. The fee percentage increase for larger meters ranges from 48% for a 3/4-inch water meter and progressively declines to a fee percentage increase of 24% for an 8-inch water meter. In that the fee increases would apply to the smaller meter that are typically used by residential developments and businesses not using large quantities of water, developers of such new properties would potentially be subject to higher fees. Those businesses using large volumes of water necessitating the use of a 3/4-inch or larger water meter, possibly including agriculture, would pay a modest increase in FRC from the existing FRC fee schedule, which were last updated in 2004, due to the proposed modifications to the FRC fee schedule.

- ii. **Establishment of Time Period to Install Water Meter.** The proposed rule changes also addresses applicants who have previously paid the FRC fee but have not yet installed their water meter. The new rule would require those applicants in those situations to have their meter installed so that the standard service charge assessed on all customers that have a right to water service may be collected. This standard service charge is used to pay a portion of their share of the cost to operate and maintain the water system. The Board did allow for a three year grace period in which these particular applicants can install their meter for no additional FRC costs. After the expiration of three years, they will be assessed the difference between what they paid previously and the cost of the FRC at the time of application.

This change should not affect small businesses. The proposed rule will require all applicants who have paid and secured water obligations from the Department to start paying their share of the cost to operate and maintain the water system. The Department has a fiduciary obligation to have all customers pay their share of the cost to operate and maintain the water system. This would benefit all water customers.

- iii. **Modification of FRC Offset.** This proposed rule change modifies the percentage of FRC Offset that can be allowed for specific source or storage or off-site



transmission facilities that are constructed by developers. Under the existing rule of FRC offsets, developers of contributed water source or storage or off-site transmission facilities would “offset” their applicable FRC liabilities by up to 33% where water source improvement are constructed, up to 33% where water storage improvements are constructed and up to 50% where offsite water main extensions are constructed; provided that the total amount of all offsets shall not exceed 100% of a developer’s FRC liability

The proposed rule change modifies the FRC offset percentages to 22% where water source improvements are constructed, up to 41% where water storage improvements are constructed and up to 37% where off-site transmission facilities are constructed. The FRC offset percentages modification was done to reflect the actual percentage of the cost of source, storage and transmission improvement necessary to provide a 5/8” water meter for future growth on an island wide basis.

Any business or individual that would need to construct source, storage or off-site water main extensions improvement to obtain water service from the Department may or may not benefit from the proposed rule’s percentage modification which would be dependent on the actual circumstances existing for said development.

- iv. **Establishment of Total FRC Offsets.** The proposed rule change also modifies exiting FRC offset liability allowed to applicants who are required to provide 100% of the source or storage or off-site transmission facilities to the DOW. The proposed modification allows the applicant to receive FRC off-set for the entire FRC liability amount per category of source or storage or off-site transmission improvements if the applicant constructs all of the source or storage or transmission facilities for their development.

Small business involving development of this magnitude would benefit from this modification of the existing rules by having the opportunity to have all of their FRC liabilities offset if certain criteria are met.

- v. **Establishment of Grant Funds Offset.** The proposed rule allows Grant Funds received for certain projects to be used to offset the identified projects FRC liability.

Any entity or individual who pursues and is approved Grant Funds for projects may be able to use the Grant Fund amount to Offset the projects FRC Liability associated with development. For example, an Affordable Housing Project that acquires State Legislature Aid approved for construction of required transmission pipeline can Offset the projects transmission portion of FRC liability in accordance with the proposed rule amendment. Small business may benefit from



this proposed rule which allows a Grant Fund to offset FRC liability associated with developments.

2. *In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.*

*If the proposed rule imposes a new or increased fee or fine:*

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

- i. **Modification of Facilities Reserve Charges (FRC).** The current FRC amount is shown in the attached Rules. The last time that the FRC fee increased was in 2004.
- ii. **Establishment of Time Period to Install Water Meter.** Not applicable.
- iii. **Modification of FRC Offset.** Unknown at this time and would dependent on actual situation.
- iv. **Establishment of Total FRC Offsets.** The proposed rule change may benefit small businesses that are required to provide source or storage or off-site transmission improvement(s). This would be dependent on the actual situation.
- v. **Establishment of Grant Funds Offset.** The proposed rule change may benefit small businesses that acquire grant funds for proposed developments. This would be dependent on the actual situation.

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

- i. **Modification of Facilities Reserve Charges (FRC).** The proposed FRC amount is shown in the attached Rules. The percentage increase for the 5/8", 3/4", 1", 1-1/2", 2", 3", 4", 6" and 8" are 307%, 148%, 134%, 133%, 124%, 133%, 125%, 124% and 124%, respectively.
- ii. **Establishment of Time Period to Install Water Meter.** No increase in service charge fee.
- iii. **Modification of FRC Offset.** Dependent on specific situation.

- iv. **Establishment of Total FRC Offsets.** Dependent on specific situation. The proposed rule change may benefit small businesses that are required to provide source or storage or off-site transmission improvement(s). This would be dependent on the actual situation.
  - v. **Establishment of Grant Funds Offset.** Dependent on specific situation.
- c. *Reason for the new or increase fee or fine.*

- i. **Modification of Facilities Reserve Charges (FRC).** The DOW currently charges new customers a one-time Facilities Reserve Charge (FRC) to new water system connections. The FRC is intended to recover a proportional share of the cost of facilities (source, storage and transmission) necessary to provide water system capacity to new developments on Kauai. The Department's schedule of FRC fees was last updated in 2004 and it was determined to be timely to conduct a periodic review of the FRC fee schedule.

In comparison, Kukui'ula Development Corporation completed all source, storage and transmission facilities required for full development of their water master plan area covering the development of 1,500 units, numerous buildings and amenities including a golf course and pool area. The total cost of construction exceeded \$26 million which would correlate to roughly \$17,300 per unit.

- ii. **Establishment of Time Period to Install a Water Meter.** DOW has a fiduciary obligation to have all applicants who have bought in to the system and which the DOW is obligated to provide water service, to have them pay their share of the cost to operate and maintain the system and not have existing consumers pay all the cost. This would benefit all water customers.
- iii. **Modification of FRC Offset.** The FRC offset percentages modification was done to reflect the actual percentage of the cost of source, storage and transmission improvement necessary to water meters for new growth on an island wide basis.
- iv. **Establishment of Total FRC Offsets.** The proposed rule allows the applicant to receive an FRC offset for the entire FRC liability amount per category of source or storage or off-site transmission improvements if the applicant constructs all of the source or storage or off-site transmission facilities for



their development. For example, presently, a developer could develop all of the source capacity for their projects needs and still not have his FRC liability for source totally eliminated.

- v. **Establishment of Grant Funds Offset.** This gives an applicant the opportunity to use Grant Funds to offset FRC liability associated with developments.
- d. *Criteria used to determine the amount of the fee or fine.*
- i. **Modification of Facilities Reserve Charges (FRC).** The Department commissioned a Needs Assessment Study and Facilities Reserve Charge Update to analyze water system capacity deficiencies and our current Water System Master Plan (Water Plan 2020). The Rate Analysis Study has recommended a new FRC fee schedule that increases the FRC fee for the Department's meters. The Rate Analysis Study was conducted in compliance with Haw. Rev. Stat. §46-143 and took into account all criteria required by law.
  - ii. **Establishment of Time Period to Install a Water Meter.** Not Applicable
  - iii. **Modification of FRC Offset.** The FRC offset percentages modification was done to reflect the actual percentage of the cost of source, storage and transmission improvement necessary to provide water for new growth on an island wide basis.
  - iv. **Establishment of Total FRC Offsets.** Allows the applicant to receive FRC offsets for the entire FRC liability amount per category of source or storage or off-site transmission improvements if the applicant constructs all of the source or storage or transmission facilities for their development.
  - v. **Establishment of Grant Funds Offset.** The use of Grant Funds is specific to certain situations.

The Department does not anticipate there will be any indirect cost that would increase under the proposed rules. The proposed changes are not expected to result in any changes in reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss or other costs. Some of the proposed changes such as establishing total FRC

offsets and establishment of the grant funds offset may benefit small businesses by reducing their FRC liability more equitably.

Any adverse effects will be limited to increased costs and not any additional administrative burden.

3. *The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.*
  - i. **Modification of Facilities Reserve Charges (FRC).** Use of FRC funds is restricted to design and construction of new facilities to provide water for new water users. FRC funds may not be used for operations, maintenance or rehabilitation work. The Department uses FRC funds (as well as other sources of funds) to pay for new facilities as defined in our Capital Improvement Program. Over the past several years, the Department has projected FRC revenues at approximately \$500,000.00 per year. The FRC provides one source of funds to be applied to the Department's Capital Improvements Budget, which is set at approximately \$21 million dollars for the 2015-2016 fiscal year.
  - ii. **Establishment of Time Period to Install a Water Meter.** The collection of service charges will benefit all customers and these fees collected will be used to pay a portion of the Department's operating and maintenance costs.
  - iii. **Modification of FRC Offset.** Unknown at this time whether the amount of offsets will increase or decrease for a particular development project. The amounts will be dependent on the specific situations.
  - iv. **Establishment of Total FRC Offsets.** Not applicable. The Department may lose revenue while the developer is afforded the opportunity to recover more of its cost to develop certain source or storage or off-site transmission facilities.
  - v. **Establishment of Grant Funds Offset.** The Department may lose revenue while the developer is afforded the opportunity to offset FRC liability with certain grant funds obtain for specific projects.
4. *The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.*



The primary method proposed to reduce the impact of the increased FRC for small meters is through the establishment of total FRC Offsets. Commonly, a land developer will need to construct necessary water system facilities to obtain service for the new development from the Department's water system, and under the current rules the offset shall not exceed the actual cost of the necessary water system facilities. The proposed rule entitles the applicant who provides 100% of the necessary source or storage or transmission requirements to an offset for the entire amount per category of source or storage or transmission improvements.

Another method proposed to reduce the impact of the increased FRC fee schedule is through the establishment of allowing grant funds to be used to offset FRC for development in certain situations.

- 5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.*

A Needs Assessment Study and Facilities Reserve Charge Update was conducted to determine the present cost to provide water system growth and increase water system capacity. The Department's Use of FRC funds is restricted to design and construction of new facilities to accommodate water system growth and increasing water system capacity. FRC funds may not be used for operations, maintenance or rehabilitation work. The Department uses FRC funds (as well as other sources of funds) to pay for new facilities as defined in our Capital Improvement Program. Results of this study are being used to determine the new FRC schedule.

- 6. Consideration of creative, innovative, or flexible methods of compliance for small businesses.*

The Department worked to minimize the impact of additional cost to our consumers by looking at different methods of assessing the FRC fee. We have come to the conclusion that the proposed FRC fee schedule is what is necessary to accommodate system growth and increasing water system capacity. In summary the Department shall treat all customers similarly in accordance with the Department's Rules and Regulations.

- 7. How the agency involved small business in the development of the proposed rules.*

The Department held community meetings and focus group sessions with both residential and commercial customers during the drafting of the proposed rule. The Department obtained input from the business community which included: Tom Shigemoto, A&B Properties; Michael Tressler, Grove Farm; Michael Faye, Kikiaola Land Company; Jobie Masagatani, Hawaiian Homes Commission; Karen Ono, Kauai Board of Realtors; Jerry Nishek, Contractors Association of Kauai and the Kauai Chamber of Commerce.

The most prominent small businesses that will bear the direct impact of the changes in the FRC fee schedule will be land developers, more particularly those that deal with development of housing.

8. *Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.*

The proposed rule amendment are similar to the existing Kauai County Board of Water Supply Rules and Regulations for new service fees and are consistent with the requirements of the Board's Rules and Regulations. To the Department's knowledge and belief, the proposed rule is typical of the requirements within the state and nationally. A comparison of fees and offsets are included in Tables 1, 2 and 3.

**Table 1  
Comparison of Current and Proposed FRCs**

Customer Class	Current FRC	Proposed FRC
Single Family Residential	\$4,600	\$14,115
Multi-Family Residential	Larger of (1) \$4,600 / unit or (2) FRC based on meter size	Larger of (1) \$9,880 / unit or (2) FRC based on meter size
Resort / Hotel	Larger of (1) \$4,600 / unit or (2) FRC based on meter size	Larger of (1) \$9,880 / unit or (2) FRC based on meter size
Based on Meter Size		
5/8-inch	\$4,600	\$14,115
3/4-inch	\$14,300	\$21,170
1-inch	\$26,400	\$35,290
1 1/2-inch	\$53,200	\$70,580
2-inch	\$90,700	\$112,920
3-inch	\$170,000	\$225,840
4-inch	\$283,400	\$352,880
6-inch	\$566,900	\$705,750
8-inch	\$907,000	\$1,129,200



**Table 2**  
**FRC Comparison with Other Hawaii Water Utilities**

METER SIZE	COUNTY OF KAUAI	COUNTY OF HAWAII	COUNTY OF MAUI	CITY & COUNTY OF HONOLULU	
	Facilities Reserve Charges <i>Proposed Rule</i>	Facilities Charges <i>effective July 01, 2010</i>	Water System Development Fund <i>effective July 01, 2015</i>	Water System Facilities Charges <i>effective July 01, 2008</i>	
5/8-inch	\$14,115.00	\$1,190.00 <sup>(1)</sup> / \$5,500.00 <sup>(2)</sup>	\$6,030.00	\$4,818.50	Agriculture use only
3/4-inch	\$21,170.00	n/a	\$18,884.00	\$6,671.44	Agriculture use only
1-inch	\$35,290.00	\$13,750.00	\$33,356.00	\$10,933.71	Agriculture use only
1-1/2 inch	\$70,580.00	\$27,500.00	\$71,948.00	\$29,650.75	Agriculture use only
2-inch	\$112,920.00	\$44,000.00	\$125,012.00	\$64,865.60	Agriculture use only
3-inch	\$225,840.00	\$82,500.00	\$279,380.00	n/a	
4-inch	\$352,880.00	\$137,500.00	\$496,460.00	n/a	
6-inch	\$705,750.00	\$275,000.00	\$1,113,932.00	n/a	
8-inch	\$1,129,200.00	\$495,000.00	\$1,977,428.00	n/a	
10-inch	n/a	\$797,500.00	\$3,089,360.00	n/a	
12-inch	n/a	\$1,182,500.00	\$4,447,436.00	n/a	
				\$185.33	Single Family Residential <sup>(5)</sup>
				\$271.27	Multifamily - Low-Rise <sup>(3)</sup>
				\$204.12	Multifamily - High-Rise <sup>(3)</sup>
				\$620.85	Non-Residential; 20-50 FU <sup>(3)</sup>
				\$220.29	Non-Residential; >50 FU <sup>(3)</sup>

<sup>(1)</sup> First service connection / First dwelling

<sup>(2)</sup> For every additional service connection to each lot / for every additional dwelling unit

<sup>(3)</sup> Water System Facilities Charges - per Fixture Unit  
(Minimum 20 Fixture Units)

**Table 3**  
**Comparison of Current and Proposed FRC Offsets**

Water System Facilities	Current Offset	Proposed Offset
Source	33%	22%
Storage	33%	41%
Transmission	50%	37%



# DEPARTMENT OF WATER

County of Kaua'i

*"Water has no Substitute – Conserve It!"*

Administrative rule material to be repealed is bracketed. New material is underscored. Deleted material is ~~stricken through~~ or [bracketed]. In printing this rule amendment, the brackets, bracketed material, underscoring, strikes need not be included

## PART 5 FACILITIES RESERVE CHARGE IN THE COUNTY OF KAUAI

### SECTION I – GENERAL PROVISIONS

1. Purpose and Authority

a. Capital water facilities expansion is needed in order to accommodate increased demands on existing source, storage, and transmission pipeline capacity due to new development and/or additional demand of existing users. New development and/or additional demand shall be assessed a Facilities Reserve Charge in proportion to its impact and demand on capital water facilities. The Facilities Reserve Charge shall be expended for public capital water facilities projects. These rules were enacted pursuant to Hawaii Revised Statutes (H.R.S.) §46-141 et seq. and other applicable State law.

2. Findings

a. In the review of the impact of growth relative to the existing and planned capital water system facilities capacity available to the water system, the Board hereby finds that the recent and anticipated population growth rates and corresponding water demands would place additional burdens on the existing water system. The Board further finds that such growth and increased demand would necessitate increased expenditures of public funds in order to create adequate facilities and to promote and protect the public health, safety, and welfare. The Board also finds that it is fair and reasonable to impose additional fees to accommodate such development. Finally, the Board finds that establishing benefit zones as identified in Hawaii Revised Statutes (H.R.S.) §46-14\* is not necessary as a reasonable benefit can otherwise be derived.

b. The following rules shall govern the assessment of impact fees for the Board of Water Supply, County of Kauai capital water facilities expansion. New development and/or additional demand shall be assessed impact fees in proportion to its demand on capital water facilities and the impact fees assess shall be expended for public capital water facilities projects. The Facilities Reserve Charge (FRC) was adopted in accordance with the report prepared by an independent consultant retained by the County of Kauai, Board of Water Supply (Board) to assess and study water facilities. The report calculated the proportionate costs associated with the water development needs as laid out in the Board approved Department facilities needs assessment study entitled "Water Plan 2020", as amended.

## SECTION II – DEFINITIONS

“Affordable or Workforce Housing Project” shall mean any project confirmed or sponsored by the County Housing Agency as a residential development where the majority of housing lots, single family dwelling units, or multiple-family dwelling units are affordable housing or workforce housing as defined in Chapter 7A of the Kauai County Code 1987, as amended.

“Applicant” means any person, individual, subdivider, corporation, partnership, business, organization, association, or other entity whatsoever that applies for water service from the Department.

“Consumer” has the meaning ascribed to it under Section I of Part 2 of the Department’s Rules and Regulations.

“Facilities Reserve Charge” (FRC) means the fee to be paid by an Applicant as their proportionate share in required improvements to capital water facilities.

“Grant Funds” shall mean a contribution, gift, or subsidy bestowed to the Board for specific water facilities improvement associated with a specific project that necessitates such water facilities improvements.

“Grantor” means the person or entity that makes a grant of funds.

“Offset” means a reduction in Facilities Reserve Charge designed to fairly reflect the value of non-site related capital water facilities improvements provided by an Applicant pursuant to Department of Water requirements.

“Recoupment” shall be defined as in H.R.S. 46-141, as amended, and refers to the proportionate share of the water facility capital improvement costs of excess capacity in existing water capital facilities where excess capacity has been provided in anticipation of the needs of development.

“Subdivider” has the meaning ascribed to it under section I of Part 3 of the Department’s Rules and Regulations.

“Subdivision” has the meaning ascribed to it under section I of Part 3 of the Department’s Rules and Regulations.

“Water transmission main” or “main” means a main extension under Paragraph 2.d [2.a.(4)] of Section II of Part 2 of the Department’s Rules and Regulations.

As used in this Section, the following rules of construction shall apply:

Number. Words in the singular or plural number signify both the singular and plural number.



“Or”, “and”. Each of the terms “or” and “and”, has the meaning of the other or of both.

### SECTION III – APPLICABILITY

1. The Facilities Reserve Charge shall be assessed against all new developments and subdivisions requiring supply of water from the County of Kauai, Department of Water, and existing developments requiring new or additional supply of water from the Department’s system. The Facilities Reserve Charge must be paid before water services are made available to the new or existing development.
2. The Facilities Reserve Charge shall be paid by all Applicants for new or additional water service, including but not limited to the following:
  - a. All irrigation services and/or meters.
  - b. Additional buildings to be connected to existing services where additional demands are indicated. The charges shall be based on the meter sizes required if the buildings were metered separately.
  - c. Additional dwellings connected to existing services and meters under the categories of single family and multi-family residential units. The charges will be based on the established schedule of charges for the respective categories.
  - d. Changes in service that require an increase in meter size
  - e. Where an FRC was paid but a water meter was never installed to serve the subject property, the applicant shall pay the Facilities Reserve Charge in accordance with Part 5, Section IV (6) of these Rules.
3. The Facilities Reserve Charge shall apply to all Applicants for water service as follows:
  - a. For each parcel created by subdivision, including the first lot created; and for every new single family residential dwelling unit not yet metered and a Facilities Reserve Charge has not yet been paid, the applicable Facilities Reserve Charge shall be \$14,115.00.
  - b. The Facilities Reserve Charge for multi-family and/or resort development will be the cost of the approved meter size or the cost of \$9,880.00 per unit or hotel room, whichever number is larger.
  - c. For all other uses, the Facilities Reserve Charge shall be determined by the size of the meter, as shown below. Meter sizes shall be determined by the Department and not by the Developer or Applicant.

<u>Meter Size</u>	<u>Amount</u>
<u>5/8"</u>	<u>\$ 14,115.00</u>
<u>3/4"</u>	<u>\$ 21,170.00</u>
<u>1"</u>	<u>\$ 35,290.00</u>
<u>1 1/2"</u>	<u>\$ 70,580.00</u>
<u>2"</u>	<u>\$ 112,920.00</u>
<u>3"</u>	<u>\$ 225,840.00</u>
<u>4"</u>	<u>\$ 352,880.00</u>
<u>6"</u>	<u>\$ 705,750.00</u>
<u>8"</u>	<u>\$ 1,129,200.00</u>

Facilities Reserve Charges are periodically adjusted by the Department. These adjustments may increase or decrease existing Facilities Reserve Charge amounts. Where adjustments to Facilities Reserve Charges result in decreases of such charges, no refund will be made of the difference between the higher, pre-existing charges and the lower, adjusted charges.

#### SECTION IV – COLLECTION AND REFUND OF FRC

1. Upon collection of the Facilities Reserve Charge, the Facilities Reserve Charge shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund.
2. If the Facilities Reserve Charge is not expended or encumbered within six years from the date of collection, it shall be refunded to the property owner or the property owner's successor in title, together with accrued interest (if any).
  - a. An application for a refund shall be submitted to the Board within one year of the date upon which the refund right arises;
  - b. Amounts unclaimed within one year of the date the right to refund arises shall be retained in a special trust fund or interest bearing account and shall be expended for capital facilities improvement projects
3. If the Board terminates the Facilities Reserve Charge (or analogous) requirement, all unexpended or unencumbered funds shall be refunded to the property owner or the property owner's successor in title, together with accrued interest (if any).
  - a. Public notices of termination and availability of refunds shall be given by the Board at least two times in a manner approved by the Board. All funds available for refund shall be retained for a period of one year and at the end of said one year period, any remaining funds may be transferred to the Board's general fund and expended for any public purposes involving water supply or service as determined by the Board.



4. No FRC refund shall be made for existing meters requiring a decrease in water demand, decrease in meter size, or decrease in existing water supply fixture units; or requests to change service categories.
5. Recoupment shall be exempt from subsections (2) and (3).
6. Facilities Reserve Charge Paid Prior to Enactment of Part 5 Rules
- a. This Section applies to those Applicants that have paid a Facilities Reserve Charge prior to enactment of these Part 5 Rules and have failed to install a water meter on the subject property for which the Facilities Reserve Charge was paid, hereinafter referred to as "Prior Applicants".
- b. Prior Applicants shall have three (3) years from the date of enactment of these Part 5 Rules, hereinafter referred to as the "Grace Period", to install a water meter, at no additional Facilities Reserve Charge cost.
- c. After expiration of the Grace Period, Prior Applicants must pay the difference of the original Facilities Reserve Charge paid and the Facilities Reserve Charge in effect at the time the meter is installed.
- d. The Manager may grant exceptions to item 5c if the Manager finds all of the following:
- i. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and
- ii. The Prior Applicant's circumstance or condition is unique or exceptional and the Manager would grant the same request if made by ever similarly situated Prior Applicant; and
- iii. Such exception thereof is as reasonably necessary or expedient and not contrary to law or the intent and purposes of these rules.
7. Facilities Reserve Charge Paid After Enactment of Part 5 Rules
- a. The Department may issue conditional approval for water service requests.
- b. A conditional approval shall be valid for a period of one year and shall expire unless installation of the meter occurs within that period or an extension of the conditional approval is granted.
- i. An extension of the conditional approval may be granted for a single additional one-year period.

- c. Upon expiration, the conditional approval shall become null and void and the Applicant will be required to re-apply to the Department of Water for water service. Any request for water service will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.
- d. A Water Meter Application and FRC payment can only be made upon completing the requirements set forth in the conditional approval.

8. Facilities Reserve Charges for Affordable and Work Force Facilities Housing Projects

- a. The Manager may defer collection of Facility Reserve Charges for Affordable or Workforce Housing Projects, provided, however that applicable Reserve Charges shall be collected before building permit approval or installation of applicable meters, whichever occurs first.
- b. Administrative fees related to the Facility Reserve Charge shall be waived for Affordable or Workforce Housing Projects.

SECTION V: FRC OFFSETS

When an Applicant, is required to construct and dedicate water source or water storage facilities, or water transmission mains, to the Department, the following rules shall apply:

1. The applicable FRC liability of such Applicant, shall be offset by up to 22% where water source improvements are constructed, up to 41% where water storage improvements are constructed, and up to 37% where water transmission mains are constructed; provided that the total amount of all offsets that an Applicant, receives shall not exceed 100% of the Applicant's, FRC liability.
  - a. An Applicant who provides 100% of the necessary source or storage or transmission requirements shall be entitled to an offset for the entire amount per category of source, storage, or transmission improvements as shown above.
2. The Department, and not the Applicant, shall calculate and determine the total amount of an Applicant's, FRC offset in any given case. The Department may require the Applicant to submit documentation verifying the actual cost of a source or storage improvement or transmission main.
3. The offsets described in this Section V "FRC Offsets" shall not apply to water transmission mains constructed by an Applicant which are within or adjacent to a subdivision or lands either 1) owned by the Applicant, or 2) developed by the Applicant. Where water transmission mains are constructed within, adjacent to, or outside of such subdivisions or lands, the offsets shall apply only to mains constructed outside of and off-site from such subdivisions or lands.



4. Grant Funds. Grant funds, specifically allocated to projects by the Grantor, may be used by the Manager to offset the FRC assessed to said projects on a dollar for dollar basis as it relates to source development, storage development and/or transmission main development.
- a. Applicants shall be offset by up to 22% where water source improvements are constructed; up to 41% where water storage improvements are constructed; and up to 37% where water transmission mains are constructed; provided that the total amount of all offsets that an Applicant receives shall not exceed 100% of the Applicant's FRC liability.
  - b. The Manager shall determine which improvements are eligible for FRC offsets.
  - c. FRC offsets shall be afforded only to those Applicants that are beneficiaries of the Grantor and identified as such at the time the Grant fund is made.
  - d. FRC offsets for Grant Funds shall be a one-time event.

#### SECTION VI – APPEAL OF FACILITIES RESERVE CHARGE

1. Any person assessed a Facilities Reserve Charge under these rules may contest the amount of the Facilities Reserve Charge assessed by following the requirements in Part 1 of these Rules and Regulations.

## Exhibit 7

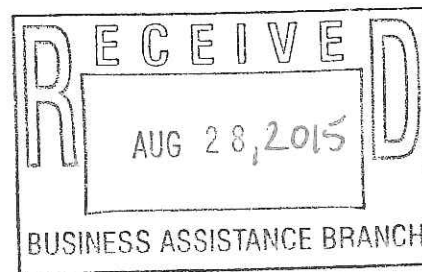


DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-86.1  
Hawaii Administrative Rules

(Date)

1. Chapter 13-86.1, Hawaii Administrative Rules,  
entitled "Sea Cucumber Management", is adopted to read  
as follows: \_\_\_\_\_



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 86.1

SEA CUCUMBER MANAGEMENT

§13-86.1-1	Definitions
§13-86.1-2	Registration
§13-86.1-3	Commercial consumption fishery; prohibition
§13-86.1-4	Commercial aquarium fishery; season; closure; restrictions
§13-86.1-5	Non-commercial fishery; daily bag limits
§13-86.1-6	Licenses, permits, and other exemptions
§13-86.1-7	Penalty

§13-86.1-1 Definitions. As used in this chapter, unless otherwise provided:

"Aquarium permit" means the permit issued by the department pursuant to section 188-31, HRS.

"Aquarium purposes" means to hold the sea cucumber alive in a state of captivity, whether as a pet, for scientific study, for public exhibition, for public display, or for sale for these purposes.

"Board" means the board of land and natural resources.

"Consumption purposes" means for food, medicine, or any other use whereby the sea cucumber is killed.

"Sea cucumber" means any echinoderm species of aquatic life in the class Holothuroidea.

§13-86.1-2

"Take" means to catch, kill, remove, capture, confine, or harvest, or to attempt to catch, kill, remove, capture, confine, or harvest. [Eff ] (Auth: HRS §190-3) (Imp: HRS §190-3)

§13-86.1-2 Registration. (a) The department may register, and assign an identification number to, any person taking or attempting to take any sea cucumber from State waters. The purpose of the number is to identify all persons taking sea cucumber to gather information on the number of participants in the fishery, the levels of effort and take, the purposes of this take, and other such relevant information the department may deem appropriate.

(b) It is unlawful for any person to take any sea cucumber from State waters or to possess any sea cucumber in or on the water or on the shoreline without a sea cucumber registration number assigned or approved by the department. [Eff ] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 190-3)

§13-86.1-3 Commercial consumption fishery; prohibition. It is unlawful for any person to sell or offer for sale any sea cucumber taken from State waters for consumption purposes, or to otherwise take any sea cucumber from State waters for commercial purposes, except for commercial aquarium purposes as provided in section 13-86.1-4. [Eff ] (Auth: HRS §§189-10, 190-3) (Imp: HRS §§189-10, 189-11, 190-3)

§13-86.1-4 Commercial aquarium fishery; season; closure; restrictions. (a) There is established an annual sea cucumber aquarium harvesting season for the taking of certain species of sea cucumber for commercial aquarium purposes from waters of Oahu only. For purposes of this section, "waters of Oahu" means



all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Oahu.

(b) Only *Holothuria hilla* and *Holothuria edulis* may be harvested for commercial aquarium purposes pursuant to this section.

(c) When a sea cucumber aquarium harvesting season is open, any person issued a valid aquarium permit, a valid commercial marine license, and a valid sea cucumber registration number may take, possess, and sell up to twenty sea cucumbers per day for aquarium purposes, subject to the provisions of this chapter, and as may be otherwise provided by law.

(d) When a sea cucumber aquarium harvesting season is closed, it is unlawful for any person to take, possess, sell, or offer for sale any sea cucumber taken from State waters for commercial aquarium purposes, except that aquarium dealers may possess, sell, and offer for sale sea cucumbers validly obtained during an open season, provided that proper receipts are kept on file pursuant to HRS §189-11.

(e) There is established an annual catch limit for sea cucumber when taken for commercial aquarium purposes. The annual catch limit for sea cucumber for commercial aquarium purposes shall be 3,600 animals per year.

(f) The board shall close the sea cucumber aquarium harvesting season when the annual catch limit is reached or exceeded or is anticipated to be reached or exceeded, as determined and announced by the board at a public meeting. [Eff ] (Auth: HRS §§189-10, 190-3) (Imp: HRS §§189-10, 189-11, 190-3)

§13-86.1-5 Non-commercial fishery; daily bag limits. Any person with a valid sea cucumber registration number may take and possess up to five sea cucumbers per day, provided that the sea cucumbers are taken and possessed for personal human use or consumption and not for commercial use or sale. [Eff

] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 190-3)

§13-86.1-6 Licenses, permits, and other exemptions. Notwithstanding the provisions of this chapter, the department may issue the following licenses and permits to exempt persons from the provisions of this chapter:

- (1) Licenses issued pursuant to sections 187A-3.5 or 189-6, HRS;
- (2) Permits issued pursuant to sections 187A-6, 188-37, or 190-4, HRS;
- (3) As may be otherwise provided by law. [Eff  
] (Auth: HRS §§187A-3.5, 187A-6, 188-37, 189-6, 190-3) (Imp: HRS §§187A-3.5, 187A-6, 188-37, 189-6, 190-4)

§13-86.1-7 Penalty. (a) Any person violating any provision of this chapter shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 190-5, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State." [Eff  
] (Auth: HRS §190-3) (Imp: HRS §§187A-12.5, 190-5)

2. The adoption of chapter 13-86.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of sections 91-4 and 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
SUZANNE CASE  
Chairperson  
Board of Land and Natural  
Resources

APPROVED FOR PUBLIC HEARING:

\_\_\_\_\_  
Deputy Attorney General