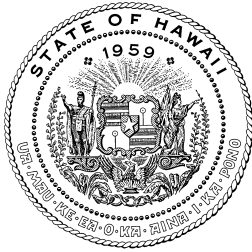


Small Business Regulatory Review Board Meeting

August 19, 2021

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: 808 586-2419

AGENDA

Thursday, August 19, 2021 ★ 10:00 a.m.

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Taryn Rodighiero
Kaua'i

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

As authorized under the Governor's August 5, 2021 Emergency Proclamation Related to the COVID-19 Response, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/3082191379>

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2021>.

An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov. Please include the word "Testimony" and the subject matter following the address line. All written testimony should be received no later than 4:30 p.m., Wednesday, August 18, 2021.

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.

I. Call to Order

II. Approval of July 29, 2021 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on the Small Business Statement after Public Hearing and Proposed Amendments to Section 5A-6.4 of the Kauai County Code, **Real Property Tax Classification Rules**, promulgated by the County of Kauai Department of Finance – **Discussion Leader – William Lydgate**

IV. 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. Update on Board’s Fiscal Year 2022 Budget
 - 2. Discussion and Action on Creating an Informal Investigative Task Force for the Purpose of Developing and Designing Phase II of the Board’s Website to include Content and Features in accordance with Section 92-2.5(b), HRS

V. Next Meeting: Thursday, September 16, 2021 at 10:00 a.m.

VI. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process, please call (808) 586-2419 or email dbedt.sbrrb.info@hawaii.gov at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of July 29, 2021 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - **DRAFT** July 29, 2021

I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:06 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- Garth Yamanaka
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch
- William Lydgate

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF June 17, 2021 MINUTES**

Mr. Yamanaka motioned to accept the June 17, 2021 meeting minutes, as presented. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

III. **OLD BUSINESS** – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 11 Chapter 53, Section 401 Water Quality Certifications, promulgated by Department of Health (DOH)

Discussion leader and Vice Chair Albitz stated that the rule changes will help to improve and streamline water quality certifications (WQC). At the public hearing, few businesses responded or voiced concerns with the changes.

Mr. Darryl Lum, DOH Waste Water Branch’s Engineering Section Supervisor, explained that a recent public hearing was held for these rules, which are issued by the State of Hawaii for projects that require federal permits and/or licenses that may result in discharges in waters of the United States. The rules certify that the state’s water quality standards will not be violated against.

The WQC program was created by the federal Clean Water Act to ensure that the federal government does not issue permits that will violate the state's water quality standards. Some examples of projects that require oversight include harbor dredging, installing a pier along the ocean, etc.

DOH's proposal involves a new chapter, HAR Chapter 53 because currently the WQC rules are in HAR Chapter 54. Anytime there is a revision or amendment to the water quality standards, the Clean Water Act requires that the EPA approves it. However, with the WQC program only the state approves it, not EPA, which is the main reason why DOH created the new chapter.

The proposal entails revisions to the WQC application processing that includes new definitions, background information, updating of federal regulation references, and pollution control measures that DOH is required to have in order to protect water quality. A "virtual" public hearing was held in February 2021 with 44 individuals attending; all comments were in support of the proposed chapter.

Vice Chair Albitz motioned to forward the proposal to the Governor for adoption. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 54, Water Quality Standards, promulgated by DOH

Discussion leader and Vice Chair Albitz stated that there did not seem to be any small business impacts with these rule changes.

Mr. Robert Phan, Environmental Health Specialist at DOH's Clean Water Branch, explained that the water quality standards for the state of Hawaii have three components. The first component is for designated uses, the second is the criteria for water quality standards, and the third involves anti-degradation requirements.

As already mentioned, a joint public hearing was held on February 1, 2021 for review of chapters 53, 54, 55, and 56 with the latter chapter previously heard by this Board. There were 90 written testimonies for Chapter 54; 83 of the testimonies, or 90%, were opposed to an amendment that requires class AA marine waters remain in its natural pristine state by prohibiting point source discharges of industrial waste water.

All of the testimonies in opposition were received from members of the Kaneohe Yacht Club. In response, DOH is deferring the changes to the section of the rules for the class AA marine waters in order to work on drafting alternative language. No other changes were made to the proposed amendments to Chapter 54.

Vice Chair Albitz motioned to forward the proposed amendments to the Governor for adoption. Ms. Rodighiero seconded the motion and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 55, Water Pollution Control, promulgated by DOH

Discussion leader and Vice Chair Albitz stated that these after public hearing rules essentially did not have any business impacts nor were there any business-related comments at the public hearing.

Mr. Lum explained that these rules are the state's NPDES (National Pollutant Discharge and Elimination System) permit rules. This permit system is required by the federal Clean Water Act and authorizes certain types of point source discharging and storm water discharges to surface waters; the EPA has authorized DOH to administer this program in Hawaii.

This rule package will relocate some of the NPDES permitting rules into this chapter from Chapter 54, which among other changes, added federal regulations from municipal drainage systems.

Of the 44 attendees at the combined virtual public hearing, one person testified on these rules with five organizations and five individuals submitting comments. Mr. Lum expanded upon the comments made at the public hearing by environmental groups; these were also included in the rules packet provided to this Board. However, any changes DOH made to the rules after the public hearing based on these comments did not have any small business impact.

Vice Chair Albitz motioned to forward the proposed amendments to the Governor for adoption. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on the Proposed Amendments to HAR Title 16 Chapter 171 Subchapter 3, Miscellaneous Insurance Rules, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Second Vice Chair Shick stated that many of the rule changes will help streamline and standardize the rules. Ms. Eunice Park, Staff Attorney for DCCA's Insurance Division, explained that this proposal was precipitated by changes to the insurance code chapter during the 2021 legislative session.

These changes create a uniform duration of the license and registrations that the Insurance Division provides to insurance licensees and registrants. In addition to housekeeping measures, the main changes will allow the Insurance Division to utilize an electronic system for processing insurance licensing, registration, renewal, and reinstatement fees. The amendments have an effective date of January 1, 2022.

The proposed changes will apply to small businesses that are currently required to be registered or licensed by DCCA's Insurance Division. Such businesses include insurance agents, agencies, adjusters, service contract providers, vehicle protectors and many others.

Finally, the proposed changes will not require additional costs to small businesses but rather would result in cost savings due to utilizing the electronic process by streamlining the application procedures.

Second Vice Chair Shick motioned to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

B. Discussion and Action on the Proposed Amendments to HAR Title 3 Chapter 40 Rules Governing Public Use of the Land Survey Division Maps, Descriptions, and Records, and Schedule of Fees for Services, Maps, and Other Record Data, promulgated by Department of Accounting and General Services (DAGS)

Mr. Ritchie stated that the Board has seen situations like these where a department will propose a fee increase when it has not increased its fees in years. This fee proposal relates to the land court and plan maps which small businesses are required to pay; the average fees will increase by 50 percent and is authorized by the HRS.

Mr. Meyer Cummins, Land Boundary Surveyor at DAGS, confirmed that his office has not updated its fee schedule in several years, despite technological advances, as the existing rules do not address "digital" copies. Many of the existing costs have developed over time. He added that most of the funds received from fees go into DCCA's general fund.

In terms of background information, Mr. Cummins explained that his office at DAGS checks maps that are registered with the land court, and also checks maps and descriptions for subdivisions that will be recorded. In the past, these checks required hundreds of manhours, running calculations, and checking land titles from historic documents. However, most of this information is currently available on line and some of the information is free to the public; so, the time involved in researching the information has significantly dropped.

Despite this, because the fees have not been increased, in some cases, nearly 30 years, there is a large disparity as to what the actual cost is for research versus the fee being charged. Although the cost of checking and processing may cost \$50 to \$60, based on the current fee schedule, only \$10 to \$15 is being charged.

Mr. Cummins also explained that his office has yet to reach out to the public regarding the rule changes. However, on an annual basis, his office does reach out to land surveying companies to educate surveyors, developers, and law firms on how to make changes, etc. Chair Cundiff acknowledged and concurred that it was probably a good time to increase the fees. He also highly recommended that DAGS take the opportunity to reach out to the stakeholders to share the reasons for the proposed changes and for feedback.

Mr. Ritchie motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

C. Discussion and Action on the Proposed Amendments to Section 5A-6.4 of Kauai County Code, Real Property Tax Classification Rules, promulgated by the County of Kauai Department of Finance

Mr. Mike Hubbard, Real Property Tax Manager at the Department of Finance - County of Kauai, explained that the proposed rules represent an amendment to Kauai's tax classification. The rules are intended to create and ensure equity between entities operating in similar fashions.

Kauai's tax system is based on the "actual use" of a property and so the rules will help define those uses. Taxing on "actual use" was established for the County of Kauai in 2013; subsequently, the County promulgated the original rules in 2015. Presently, the initial need to amend these rules arose from two separate changes in the Kauai County Code. Therefore, the amendments in these rules mirror the County Code's changes.

The first change, which was modified in 2020, relates to home exemption, Section 12-6 (h), where the qualifications under the Homestead Act have been strengthened. The second change relates to the residential investor classification under Section 12-6 (i) where the threshold of the assessed value was reduced from \$2 million to \$1.3 million. This section further denotes how to be excluded from the residential investor classification, which is the third highest tax rate. In addition, other sections throughout the chapter have been clarified and modified.

Confirming Chair Cundiff's initial comments, there is not a specific impact to small business but instead the proposed rules create equity across the board. Finally, Mr. Cummins noted that his office will be reaching out to the various stakeholders and educating the businesses that may have, for example, unique circumstances where they have a living unit or dwelling on their properties.

Vice Chair Albitz motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Proposed Amendments to HAR Title 5 Chapter 5-11, Notaries Public, promulgated by Department of the Attorney General

Mr. Dean Soma, deputy attorney general at the Department of the Attorney General explained that because Act 54, SLH 2020 added a new online remote notary public designation, these rules needed to be modified. While modifying the rules, the department took the opportunity to update other sections in the rules. Although not a lot was changed, some of the modifications include adding definitions and a "notification of status" with a \$25 fine, if not notified.

Deputy Attorney General Soma stated that many of the larger businesses, such as banks, were more interested in getting the online designation than the smaller businesses. The designation change was prompted by both the pandemic and the companies' needs and interest.

Vice Chair Albitz motioned to move the proposed amendments to public hearing. Ms. Rodighiero 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, HRS

1. Board's Fiscal Budgets

Chair Cundiff noted that this Board spent a total of \$1,790.73 this past fiscal year. Historically, this Board has had an annual fiscal budget of \$12,000, and during this past year it was reduced to \$10,800 (total of \$12,000 minus a 10% holdback or \$1,200).

Recently, he, Mr. Ritchie and Ms. Palcovich met with DBEDT Director Mike McCartney and discussed several board-related topics - past and current budgets; hybrid meetings, virtual and in-person board meetings; and Phase II of the Board's website.

Overall, Director McCartney is very supportive of this Board and understands the value it brings to the department and to the state, and he will continue to provide his support as needed. We will also continue dialogue with Director McCartney as to what we would like to accomplish going forward, such as Phase II of the Board's website project. Phase II will entail offering more pro-active interaction with small businesses; some of the budget would be used for this next phase.

If in-person meetings were resumed and neighbor island members were to attend the meetings the total expense, which includes the cost for travel, would be approximately \$16,000. However, we will continue in the current mode of operation with remote meetings via Zoom. He added that while more and more state boards are moving towards in-person meetings, we will continue to monitor the situation to see at what point we might be able to conduct in-person meetings keeping in mind that we will need to be sensitive to the cost.

Chair Cundiff noted that effective January 1, 2022, the Sunshine law will allow for virtual meetings. Deputy Attorney General Alison Kato confirmed this and explained that the Sunshine law will change to virtual meetings as long as there is one physical location with audio/visual connection that members of the public can attend. Chair Cundiff added that this new law will allow for hybrid meetings.

Deputy Attorney General Kato also mentioned that the current law does not allow for this but requires all locations to be disclosed; however, presently that is suspended by the Governor's emergency proclamation. Additionally, a new emergency proclamation comes out every two months; the current proclamation end August 6, 2021.

Also, in regard to updating the Board's website, Mr. Ritchie stated that Phase II would allow small businesses to go to the website and specifically sign-up for the department's rules that they would like to receive, rather than receiving an email for every rule that is reviewed by the Board. It was suggested that Phase II of the website be placed on next month's agenda for discussion.

2. Review and Update of Board Members' "Discussion Leader Assignments" for State and County Agencies' Hawaii Administrative Rule Review

Chair Cundiff motioned that wherever Harris Nakamoto is assigned as a discussion leader, the back-up discussion leader will take over the primary role; and wherever Harris Nakamoto is assigned as a back-up discussion leader, in the event the current primary discussion leader cannot attend a board meeting, the discussion leader will be assigned on a rotational-basis of the Board's Chair (Robert Cundiff), Vice Chair (Mary Albitz) and Second Vice Chair (Jonathan Shick); Mr. Lee seconded the motion and the Board members unanimously agreed.

VI. NEXT MEETING - Thursday, August 19, 2021 at 10:00 a.m.

VII. ADJOURNMENT – Chair Cundiff made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:50 a.m.

DRAFT

III. Old Business – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Section 5A-6.4 of the Kauai County Code, Real Property Tax Classification Rules, promulgated by the County of Kauai Department of Finance

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

Department or Agency: County of Kauai Department of Finance - Real Property Division

Administrative Rule Title and Chapter: Real Property Tax Classification Rules

Chapter Name: Section 5A-6.4 of the Kauai County Code

Contact Person/Title: Mike Hubbard, Real Property Tax Manager

Phone Number: (808)241-4228

E-mail Address: mhubbard@kauai.gov Date: August 2, 2021

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.

Presented to the SBRRB on July 29, 2021 for the pre-public hearing impact statement.

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

No. The comments that were received by the SBRRB during the pre-public hearing meeting were addressed by conducting outreach to taxpayers who may be potentially impacted by these changes.

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.

Pre-public hearing at the SBRRB. Public hearing held on August 2, 2021 on via Microsoft Office TEAMS.

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

SBRRB's comments on outreach were addressed. We received no public testimony (oral or written).

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

The Dept of Finance has reviewed the testimony and intends to move forward with the amendments as originally drafted.

4. The number of persons who:
 - (i) Attended the public hearing: 0
 - (ii) Testified at the hearing: 0
 - (iii) Submitted written comments: 0

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>

COUNTY OF KAUA`I DEPARTMENT OF FINANCE

Pursuant to the authority granted to the Director of Finance under the Kaua`i Code Section 5A-11.2, the Director proposes to amend the Department of Finance Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough. Proposed additions to existing Rules and Regulations are underlined and will appear in red. A public hearing on proposed amendments will be held on August 2, 2021 via the Microsoft Teams online platform at 9:00 a.m., or soon thereafter.

**DEPARTMENT OF FINANCE
COUNTY OF KAUA`I
REAL PROPERTY ASSESSMENT DIVISION
REAL PROPERTY TAX CLASSIFICATION RULES**

Administrative Rules of the Director of Finance Relating to Real Property Tax Rate Classifications under Section 5A-6.4 of the Kaua`i County Code 1987, as amended.

§RP-12-1 **Purpose.** These rules implement the provisions of Section 5A-6.4 of the Kaua`i County Code (“K.C.C.”) relating to tax rate classification. These rules are further intended to ensure that the referenced provisions are applied in a uniform and equitable manner. These rules and any definitions in these rules apply only to K.C.C. § 5A-6.4.

§RP-12-2 **Authority.** These rules are promulgated pursuant to K.C.C. § 5A-1.2(j) under the Director of Finance’s authority to effectuate the purpose of K.C.C. § 5A-6.4.

§RP-12-3 **Retroactive effective date.** These rules shall be effective and applied retroactively to the furthest extent allowable by law.

§RP-12-4 **Definitions.** As used in these rules, except as otherwise required by context:

“Actual use” means how the owner uses the property as of the date of assessment.

“Definite established uses” includes categories of actual uses included in a general class, but the general class is not limited to the included definite established uses.

“Home office” means a portion of the taxpayers’ property dedicated to work-related activities but is not advertised or operated as a place of business.

“Household” means a single person or a number of related or unrelated people who reside in a living unit.

“Living unit” means an apartment, condominium, house, portion of a house, or structure ~~[occupied by a household.]~~ designed or intended for occupancy by a person(s).

“Long term rental” means a residential rental agreement for a period of at least one hundred and eighty days. ~~[This also includes month to month tenancy, if it is the same tenant for at least one hundred and eighty days.]~~ Rental agreements must be signed by the owner, signature by the owner’s agent is not sufficient.

“Owner” is defined in K.C.C. § 5A-7.1 and K.C.C. § 5A-1.1.

“Place of business” means a structure where a person engages in a trade or business evidenced by customer parking, client traffic, advertising, or signage.

“Principal residence” means the primary location that a person inhabits. Criteria for determination of a principal residence are outlined in the Department of Finance Home and Related Exemption Rules Section RP-10.4.

“Productive” means producing a benefit or income, which depend on the physical attributes, locational attributes, legal entitlements, or improvements.

“Short term rental” means a residential rental agreement for a period of less than one hundred and eighty days.

§RP-12-5 **Procedure.** Real property shall be classified into a general class provided in K.C.C. § 5A-6.4 for tax rate purposes. Assignment to a general class is based on the actual use of the property on October 1st preceding each tax year.

§RP-12-6 **Clarification of general classes.** The general classes are defined and definite established uses for tax classification are provided. The definite established uses provided are not exhaustive. If a property’s actual use is included in the definite established uses, the property shall be assigned to that class. If a property’s actual use is not found in the definite established uses, or a definite established use is not provided, the definitions as well as definite established uses are to be read together to properly classify a property.

(a) “Residential” includes use as a residence

(1) Definite established uses: long-term rental, second home exclusively used by the owner(s), vacant residential structures, ~~[and]~~ or a part time residence not occupied as a ~~[principle]~~ principal residence.

(b) “Vacation rental” includes the renting out or exchange of an apartment, condominium, living unit or house on a temporary basis to a person(s) as an alternative to a hotel for a period of less than one hundred-eighty consecutive days.

(1) A property subject to the Hawai’i Transient Accommodation Tax, other than those classified as Hotel & Resort, will be considered a vacation rental.

(2) Advertising of any sort which offers a property or portion of a property as a vacation rental or short term rental shall constitute prima facie evidence of the operation of a vacation rental.

(3) Engaging or advertising on Home Exchange websites.

(c) “Commercial” includes the use of the property to generate income, monetary gain or economic benefit.

(1) Definite established uses: golf course, retail space, commercial office space, shopping centers, strip malls, hospital facilities, medical offices, dental offices, restaurants, theatres, fitness centers, churches excluding those defined in Kaua'i County Code 5A-11.10(b)(3) and (b)(4), schools, recreational enterprises ~~[conducted for profit]~~, amusement enterprises ~~[conducted for profit]~~, ceremonial enterprises ~~[conducted for profit]~~, places where commodities or services are offered for sale, ag tourism, and spa facilities.

(2) The retail sale of value-added products ~~[grown and]~~ sold on agricultural lands does ~~[not]~~ constitute a commercial use~~[-unless a commercial use permit is granted]~~. However, the retail sale of any ~~[other product constitutes commercial use.]~~ raw fruits or vegetables grown and harvested on the subject property of it's associated farms does not constitute commercial use.

(3) Commercial use does not include a home office as defined in these rules.

(d) “Industrial” includes pertaining to manufacturing or processing, including the performance of mechanical or chemical operations.

(1) Definite established uses: manufacturing facilities, warehouse space, auto repair, paint or body shops, equipment baseyards, chemical production, chemical storage, mini-storage space, energy production facilities, communication towers, commercial kitchens, agricultural campuses, and processing and packing facilities.

(e) “Agricultural” includes the science or practice of farming, including cultivation of the soil for the growing of crops and the rearing of animals to provide food, wool, and other products.

(1) Definite established uses: farming or plant cultivation, ranching livestock, beekeeping, dairy farming, forestry, aquaculture, plant nurseries, horticulture structures, equestrian buildings, ~~[agricultural production facility, agricultural packaging facility,]~~ and permitted farm worker housing.

(f) “Conservation” is a classification reserved for vacant properties zoned within a conservation state or county land use district.

(g) “Hotel and Resort” includes an establishment providing rooms and amenities for transient tenants as a place where people go for rest, recreation, or sport.

(1) Definite established uses: hotel operations, resorts and amenities, motels, and timeshare units.

(h) "Homestead" means a property which is used exclusively as the owner's principal residence, provided that the owner has applied for and has been granted a home exemption according to K.C.C. § 5A-11.4.

(1) Criteria for qualification:

(A) The property must be the owner's principal residence occupying the home for more than two hundred seventy (270) calendar days (the calendar year shall begin on the date of assessment, October 1, and end on September 30 of the following year).

~~[(B) Submittal of a State of Hawai'i Resident Income Tax Return, or any other sufficient documentation approved by the Director of Finance, with a reported address in the State of Hawai'i.~~

~~(i) Sufficient documentation may include the documents referred to in Section RP-10.4, Home and Related Exemption Rules.~~

~~(ii) If the owner is not required to file an Income Tax Return, a notarized affidavit must be filed indicating the owner's principle address and indicating the dates of residency in the County of Kaua'i.~~

~~(iii) Non-resident and part-year resident State of Hawai'i income tax returns do not qualify for the home exemption.]~~

(B) The owner files an income tax return as a resident of the State of Hawai'i with a reported address within the County of Kaua'i the year prior to the effective date of the exemption. Non-resident and part-year resident State of Hawai'i income tax returns do not qualify.

(C) Presentation of a valid Hawai'i Driver's License, Hawai'i State Identification, or Resident aliens possessing a valid resident alien card claiming residency only in Hawai'i with an address on Kaua`i.

(D) Is stationed in the County under military orders of the United States.

(2) Properties that have multiple living units must have owner-occupants with qualified home use exemptions and long-term affordable rental occupants in the other living units to be eligible.

(3) Principal residence properties that have either agriculturally dedicated lands or licensed day cares located on the same property and no other additional uses may be eligible.

(4) A home office, defined in these rules, may be included in a homestead.

(i) “Residential Investor” is a classification for ~~residential~~ properties that do not qualify for the home exemption, are improved with a dwelling unit(s), not vacant land, and have an assessed value of ~~[two million dollars (\$2,000,000.00)]~~ one million three hundred thousand dollars (\$1,300,000.00) or more.

(1) This class does not include a property where all living units are rented on a long term rental basis. In order for property to be excluded from the Residential Investor tax class based on all living units being rented on a long term rental basis, each of the following conditions are required:

(A) The rental/lease agreement cannot expire on or before October 1st preceding each tax year. Those submitting rental/lease agreements expiring October 31 or before must provide a renewal agreement not later than November 15.

(B) Owners must not rent any of the living units to themselves personally, or via a related corporation, co-partnership, or company.

(C) Tenants must be the age 18 years or older.

(D) Renters/lessees must occupy the property as their principal residence.

(E) Owners whose property is currently classified as Residential Investor and who seek a lower tax rate based on all living units being rented on a long term rental basis must submit an application to the real property division by September 30 before the relevant tax year for a lower tax rate, and the application must include as an attachment a long-term lease for each living unit.

(j) “Commercialized Home Use” is applicable to parcels utilized for multiple purposes, one of which is use as the taxpayer’s principal residence as of the date of assessment, provided that the taxpayer has been granted a home use exemption on the property pursuant to K.C.C. § 5A-11.4.

§RP-12-7 **Vacant land.** Vacant land shall be classified as zoned until actual use is established. If the property has multiple zonings, then an assessment is made for each zoning. Once actual use is established, the tax classification will be assigned to the entire parcel.

(a) “Vacant land” means unimproved land~~[, or a portion of the property verified by a special use permit,]~~ that lacks the essential appurtenant improvements required to make it productive.

(b) The following general classes are zonings for vacant land and actual uses: residential, commercial, industrial, agricultural, and hotel and resort.

§RP-12-8 **Partially Complete.** A partially complete property shall be classified as zoned until actual use of the improvements has been established.

(a) "Partially complete" means a property, that shall be added to the assessment list pursuant to K.C.C. § 5A-8.1(e), where active construction exists, but has not yet been completed establishing the actual use. This includes structures with completion between twenty percent (20%) and sixty nine percent (69%). Completion percentage is determined by the "Appraisal and Component Rating Worksheet for Incomplete Buildings" incorporated into these rules by reference. This worksheet is available from the Real Property Assessment Division.

(b) At seventy percent (70%) completion, actual use may be established. Once actual use is established, the tax classification will be assigned to the entire parcel.

(c) Pursuant to K.C.C. § 5A-8.1(e), the Assessor may conduct a site inspection to determine whether a building is twenty percent (20%) complete or more.

§RP-12-9 **Criteria to change tax classification.** The following proof must be submitted, if applicable, to the Real Property Assessment Division by September 30th of the year prior to the desired change.

(a) Cessation of all previous use on the property.

(b) Removal of all signage indicating the previous use of the property.

(c) Removal of all advertisements, referencing the previous use of the property.

~~[(d) A copy of the County of Kaua'i Planning Department's closing letter or email acknowledging compliance with any use violations.]~~

(d) Removal of all special permits, tax licenses, use licenses or entitlements granted to the property. If applicable, acknowledgment by the County of Kaua'i Planning Department that the transient vacation non-conforming use permit is forfeited.

(e) A newly completed Use Survey indicating current actual use(s).

(f) ~~[Affidavit]~~ Written statement or letter from the owner describing the current use(s) of the property and the last known date of prior use, or last booking date.

~~[(g) Additional requirements to change from a "Vacation Rental" to a different class.~~

~~(1) Acknowledgment by the County of Kaua'i Planning Department that the transient vacation non-conforming use permit is forfeited.~~

~~(2) An affidavit indicating the last pre-paid or reserved booking of the vacation or short term rental use on the property.~~

~~(3) Proof of cancellation of Transient Accommodations Tax License.~~

~~(4) A copy of a current long term lease and most recent general excise tax license filing.]~~

The Department of Finance reserves the right to audit records to ensure compliance.

§RP-12-10 **Appeal**. The owner may appeal the property's tax rate classification as in the case of an appeal from an assessment, as provided in K.C.C. § 5A-6.4(g).

§RP-12-11 **Severability**. If any provision of these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.

IV. Administrative Matters

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

1. Update on Board's Fiscal Year 2022 Budget

SBRRB Budget Records
Monthly Expenses
FY 21-22

7/1/2021 - 7/31/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

8/1/2021 - 8/31/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka						\$ 7.95	
Taryn Rodighiero							
Dori Palcovich							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7.95	
Total Monthly Expense							\$ 7.95

9/1/2021 - 9/30/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							

Dori Palcovich							
SBRRB - Postage Stamps							
SBRRB							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

10/1/2021 - 10/31/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich - OWL Membership DUES							
SBRRB							
SBRRB - Postage Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

11/1/2021 - 11/30/2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Postage Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

12/1/2021 - 12/31-2021

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

1/1/2022 - 1/31-2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
SBRRB - PBN Subscription							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

2/1/2022 - 2/28/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							

SBRRB							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

3/1/2022 - 3/31/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

4/1/2022 - 4/30/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

5/1/2022 - 5/31/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships; Registrations	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich - Hawaii Small Business Conference Maui							
SBRRB							
SBRRB - Stamps							
SBRRB - Hawaii Small Business Fair							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

6/1/2022 - 6/30/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
SBRRB - Supplies							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

Monthly Expenses for 7/2021 - 6/2022

Months	Air	Car/Taxi	Parking	Subscriptions	Memberships; Registrations	Supplies; Equipment; Postage	TOTAL
July	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
August	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7.95	
September	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
October	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
November	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
December	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
January	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

February	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
March	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
April	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
May	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
June	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7.95	
							\$ 7.95

IV. Administrative Matters

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

2. Discussion and Action on Creating an Informal Investigative Task Force for the Purpose of Developing and Designing Phase II of the Board's Website to include Content and Features in accordance with Section 92-2.5(b), HRS

§92-2.5 Permitted interactions of members. (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

- (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;
- (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
- (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

(1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;

(2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and



(3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:

- (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and
- (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

(f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1]

Law Journals and Reviews

Hawai'i's Sunshine Law Compliance Criteria. 26 UH L. Rev. 21.



Case Notes

Even assuming that written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals constituted a permitted interaction under subsection (a), the memoranda violated the mandate under subsection (b) that no permitted interaction be used to circumvent the spirit or requirements of the sunshine law to make a decision or to deliberate toward a decision upon board business. The "express premise" of the sunshine law is that opening up the government process to public scrutiny is the only viable and reasonable way to protect the public. 130 H. 228, 307 P.3d 1174 (2013).

Written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals did not fall within the permitted interaction described in subsection (a) because the memoranda: (1) were distributed among all of the members of the Maui county council rather than among only two members of the board; and (2) sought a commitment to vote by asking for "favorable consideration" of the proposals contained within them and thus, violated the sunshine law. 130 H. 228, 307 P.3d 1174 (2013).

Although subsection (a) does not expressly preclude city council members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under §92-5(b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

