

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

August 15, 2019

Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building
(State Office Tower), Honolulu, Hawaii 96813

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- William Lydgate, Second Vice Chair
- Harris Nakamoto
- Mary Albitz
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch
- Jonathan Shick
- James (Kimo) Lee

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF JULY 18, 2019 MINUTES**

Mr. Nakamoto made a motion to accept the July 18, 2019 minutes, as presented. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

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

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing to Title 8, Department of Liquor Control, Subtitle 1, Liquor Commission, promulgated by Department of Liquor Control, County of Maui, as follows:
- i. Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui;
 - ii. Chapter 102, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui

Ms. Albitz stated that most of the comments at the public hearing related to concerns by the general public; the small business community supported the changes.

Ms. Albitz made a motion to move the proposed rules for adoption to the Mayor. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS – Before Public Hearing

- A. Request by Mel Wills III, Holo Holo Chargers, on behalf of the Hanalei Department of Land and Natural Resources Permitted Boaters for review of recommended revisions to the Proposed Amendments to Part IV, Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Sections 30 to 36, promulgated by County of Kauai Department of Parks and Recreation

Vice Chair Cundiff refreshed everyone's memory noting that the subject rules came before this Board last month where no one showed up and the Board voted to move the rules onto public hearing.

Testifier, Mr. Mel Wills, III, stated that this rule will drastically impact the small businesses in Kauai. The Hanalei North Shore Permittee's proposal to amend its existing Rules and Regulations Governing Commercial Boating Activity at County Beach Parks by 1) moderately increasing the number of passengers to match the vessels Coast Guard Certificate of Inspection. Section 32; 2) moderately extending the allowable days of operation to comply with the new SMA proposal. Section 33; 3) Defining the allowed Ingress/Egress as defined by DLNR/DOBOR. Section 33; and 4) Clarify minimal impact upon public facilities allowing short-term parking of trailers.

The proposed rules will eliminate intentions of the parties that lost in Federal Court to overregulate the North Shore Permitted Boaters by creating rules that led to increased operating costs and unreasonable burdens. Previous regulation eliminated the ability to be compliant with all agencies as their rules were contrary. All business in Hanalei benefit from the Boating Permittee's as they bring in a limited amount of people that, in turn, spend monies in Hanalei at retail shops, restaurants, etc. Mr. Wills stated that he is in direct discussions with the new shuttle project and offsprings of another shuttle to reduce the number of cars and reduce traffic in Hanalei, increasing parking for other persons to spend monies and visit Hanalei by reducing parking space needs. Second Vice Chair Lydgate thanked Mr. Wills for attending the meeting today.

Second Vice Chair Lydgate informed the members that the Weke boat ramp is used for public and commercial boat launching into Hanalei Bay. In the 70's and before hurricane Iniki, there was a lot of commercial activity out of Hanalei. There was push-back and in more recent years there has been more regulation and less activity. He believes there is a balance to be found with charter boats having a place in the Hanalei community. Second Vice Chair Lydgate informed Mr. Wills that his testimony is appreciated.

Mr. Patrick Porter, Director, County of Kaua'i Department of Parks and Recreation and Mr. Wallace Rezentes, Deputy Director, County of Kaua'i Department of Parks and Recreation explained that the commercial boaters require another opportunity to open the process; the current rules are now seven years old. Public hearing has been scheduled for September 3rd. Chair Cundiff thanked the representatives for showing up today as it shows a willingness to work with the stakeholders with an open dialogue.

Mr. Tim Lyons, Executive Director of the Ocean Tourism Coalition, submitted testimony encouraging support to Mr. Wills' recommended revisions and their eventual inclusion in the final proposed amendments by the County of Kauai Department of Parks and Recreations.

V. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 234, Section 26 Fees and Charges, promulgated by Department of Land and Natural Resources (DLNR)

Mr. Edward Underwood, Administrator and Mr. Todd Tashima, Legal Fellow, from DLNR's DOBOR (Division of Boating and Ocean Recreation) explained that previously he came before this Board with a packet of all DLNR fee changes. The fee packet recently went to the Governor, but the fees under Section 26 were pulled from the final packet; these fees have not been increased since 1994.

Mr. Charles Toguchi, Hawaii Representative for CLIA (Cruise Lines International Association) – Alaska, testified that the proposed changes are applicable to all DLNR small boat harbors, including Lahaina, Kailua-Kona and Lanai. After more than a year of discussions on various issues, DLNR is now limiting their latest draft proposal to only passenger fee increases.

He further testified that under the current rules, passengers on cruise vessels engaged in only inter-island commerce (domestic) are assessed \$.30 each way or \$.60 total when they visit Kailua-Kona or Lahaina Small Boat Harbors. Passengers on cruise vessels involved in international or inter-state commerce (foreign-flagged) pay \$1.00 each way or \$2.00 per passenger visiting the same DLNR small boat harbors.

CLIA has several concerns with DLNR's latest draft proposal to increase passenger fees. While CLIA supports fair and reasonable fees for services provided to passengers and vessels in DLNR harbors. CLIA does not support a process that does not provide a reasonable transition time to implement new fees.

To lessen the economic impact of the proposed passenger fee increases, CLIA has suggested that DLNR consider phasing-in the increases. Mr. Toguchi distributed information regarding DLNR's proposed fee increases and CLIA's suggested fees, both domestic and foreign, for Lahaina Small Boat Harbor, Kailua-Kona, and other DLNR Small Boat Harbors.

Mr. Underwood explained that the fee changes have been discussed with Norwegian Cruise Lines over the past six years. The general value and basis of the fee increases were established largely due to repairs of the piers. While a detailed break-down was provided to the stakeholders, they reluctantly agreed to increase. He pointed out that no "phase-in" ability is available due to the Jones Act and that only the tendering fee is charged. Once the rule takes effect, the new fees will take effect. In response to a question regarding the commerce clause, Mr. Tashima explained that the rules will apply to the "domestic" carriers.

In response to whether small businesses are impacted, Mr. Toguchi noted that many of the small businesses are indirectly affected, such as the food vendors, etc. Mr. Ritchie commented that the Attorney General's Office stated that if the rules are not done immediately, there will be a violation of the commerce clause; Mr. Underwood responded that DLNR attempted to "phase-in" the increase but because it was so small, it was determined that the rules should move forward. Mr. Nakamoto added that the cruise ship industry is very valuable to Hawaii and the phase-in approach should be considered.

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

VI. REGULATION FOR REVIEW

- A. Follow-up from DLNR and Action, if Appropriate, on the May 16, 2019 Board Meeting Discussion About Whether or Not All Bottomfish Restricted Fishing Areas Should be Opened and/or Dis-established under HAR Title 13 Chapter 94, Bottomfish Management

Chair Cundiff reminded the members that based on the prior request of Mr. Alton Miyasaka, this Board sent a letter to DLNR's Chairperson Suzanne Case on May 30, 2019, suggesting that a periodic review be performed on HAR Section 13-94(8)(d), Bottomfish restricted fishing areas, and on the conservation areas listed under Exhibit A: Bottomfish Restricted Areas (BRFAs) 4-8-21, to determine how, if at all, the restrictions may be less burdensome on small business.

In response to the Board's letter, on July 24, 2019, Chairperson Case sent a letter stating that "pending careful monitoring over time of the impact of opening up for BRFAs on Bottomfish stocks, both site-based and fisher-based, and the economics of the deep-7 Bottomfish fishery, the judicious approach is to open four, not twelve, BRFAs at this time."

Based upon Ms. Case's response, it was suggested that a letter is sent to Mr. Miyasaka to explain what action the Board took on his behalf regarding his request and what the response was from DLNR.

Ms. Albitz made a motion for the Board to send a letter to Mr. Alton Miyasaka to advise him of the Board's letter to DLNR as well as Chairperson Case's response letter to the Board. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

VII. 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, on the following:
- i. Proposed Appropriations Request for the 2020 Legislative Session

Chair Cundiff explained that, as in the past, this Board has requested an appropriation for outreach and other related expenses. However, this year all budget appropriations will be included in one budget bill, not individual, separate bills requesting funds.

For fiscal 2020, the Board is requesting \$30,000, but the request must go through the proper channels; the Budget and Finance Department, as usual, will screen DBEDT's budget request before it goes to the Legislature.

ii. Launch of Board's New Website

The members reviewed the various pages of the Board's new website. Chair Cundiff thanked the website committee for its hard work.

iii. Meetings with Board Members and State Department Directors

Chair Cundiff encouraged the members to continue to schedule meetings with the state agency directors.

Regarding the September board meeting, Ms. Alcos will contact each member to make sure there will be quorum; if not, DBEDT will attempt to reschedule the September meeting date.

VIII. NEXT MEETING – The next meeting is scheduled for Thursday, September 19, 2019 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

IX. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Mr. Nakamoto seconded the motion; the meeting adjourned at 11:40 a.m.