

## Small Business Regulatory Review Board

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### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING December 9, 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, 2<sup>nd</sup> Vice Chair
- Garth Yamanaka
- William Lydgate
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

- Dr. Nancy Atmospera-Walch

**STAFF: DBEDT**

Dori Palcovich  
Jet'aime Ariola

**Office of the Attorney General**

Alison Kato

II. **APPROVAL OF OCTOBER 21, 2021 MINUTES**

Second Vice Chair Shick motioned to accept the October 21, 2021 meeting minutes, as agreed. Vice Chair Mary Albitz seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS** – Before Public Hearing

- A. Discussion and Action on Proposed New Rules for Title 3 Department of Budget and Fiscal Services, Subtitle 6 Liquor Commission, Rules of the Liquor Commission of the City and County of Honolulu, State of Hawaii, as follows, promulgated by the Liquor Commission, City & County of Honolulu

- a. Part I. Chapter 80.1, General Provisions
- b. Part II. Chapter 81.1, Liquor Commissions
- c. Part III. Chapter 82.1, Licenses and Permits, General Provisions
- d. Part IV. Chapter 83.1, Procedure for Obtaining License
- e. Part V. Chapter 84.1, Duties of and Supervision Over Licensee
- f. Part VI. Chapter 85.1, Revocation of License
- g. Part VII. Chapter 86.1, General Violations and Prosecutions

Ms. Anna Hirai, Assistant Administrator at the City & County of Honolulu Liquor Commission, summarizes the rule amendments, the Liquor Commission has 1,422 licensees, representing 12 active license classes. With the exception of hotel class licensees (49/1,422), virtually all licensees are small businesses within the meaning of HRS §201 M-1. The proposed rules are substantially based on existing rules, with changes to clarify existing requirements, eliminate unnecessary regulation, and update necessitated by statutory changes. The Liquor Commission believes that adverse impact has been minimized.

As the proposed rules are substantially based on existing rules with the above-described changes, no increase in the level of direct costs or indirect costs are anticipated for licensee compliance. Clarification of existing requirements and elimination of unnecessary regulation were based on licensee and staff input. Accordingly, adverse impact to our licensees has been minimized to the extent practicable. Any requirements that imposed procedures and protocols solely on staff (internal management) without impacting a licensee's rights or available procedures were not included in any proposed rules.

The Liquor Commission is undergoing the roll out of a new online application system and database. With that project in the background, it was an appropriate time to look at the entire rule group and clean up the format and to address recent statutory changes. The Liquor Commission intends to return to rule making approx. 1 year from effectiveness of this group to address any needed clean up and housekeeping effort.

The Liquor Commission solicited input from the 12 active license classes via the licensees themselves or licensee representatives (collectively, "stakeholders") prior to conducting stakeholder meetings. The Liquor Commission conducted four (4) Zoom stakeholder meetings in 2021, which are listed in the attached table entitled "Stakeholder Meeting Attendance", which includes attendance demographics. Stakeholder input from the four (4) meetings are detailed in the attached table entitled "Stakeholder Input". Of the 17 inputs received, LIQ anticipates substantial testimony at public hearing pertaining to the following proposed rules, §3-82-31.15 Deliveries and §3-82-38.18 Sampling on Licensed Premises.

In the case of the Deliveries rule, Liquor Commission wishes to proceed to public hearing with both versions (depicted in purple and green text). The versions could not be reconciled through informal discussion, and the Liquor Commission believes that the Commission decision makers (the five-member Commission) would benefit from testimony for and against both positions prior to approving a particular version or developing a hybrid version.

There was a handful of testimony submitted and they all express the same concern. The concern rests in the proposed language where the requirement is the "same ownership" for the satellite entities. This is concerning for a liability purpose from potential accidents where that liability from one location would carry over to all locations. Testimony provided claims satellite locations are a vital part to the brewing industry as it allows to locate breweries (where beer is produced) in industrial areas while opening satellite locations in more commercial areas. This translates to growth for manufacturing components and more jobs and more taxable income.

Second Vice Chair Shick asked how the classification of ownership is written in the rules and how it will affect the breweries. Ms. Hirai explains that they made modifications to that ownership language in both the brewpub licensees and small craft producer rules. She encourages moving to public hearing to air all the different opinions in the public hearing forum and it would be in that environment to seek advice from corporation council to make the most informed decision.

Chair Cundiff states for the record that we did receive written testimony from Brew Lab HI, Honolulu Beerworks, Kauai Island Brewing Co., Waikiki Brewing, Lanikai Brewing Co., and Maui Brewing Co. Chair Cundiff commends Ms. Hirai and the City & County of Honolulu Liquor Commission for including all the licensees for input and acknowledges that it is a huge undertaking with 188 action items. He explains that it appears everyone has an issue with the one inclusion statement of “same ownership.” Testimony suggests indicating the same “trade name” only and drop “same ownership.”

Ms. Hirai recognizes that more work needs to be done on the two rules and proposes that the Liquor Commission be permitted to exclude §82-31.05, Brewpub licenses and §82-31.17, Small craft producer pub licenses from the current rule amendment package and move forward to public hearing with everything else. It would be 186 items moving to public hearing instead of 188 items with holding two rules back for further work.

Second Vice Chair Shick motioned to recommend that the proposed amended rules move forward to public hearing with the exclusion of §82-31.05, Brewpub licenses and §82-31.17, Small craft producer pub licenses. Vice Chair Albitz seconded the motion, Mr. Yamanaka recused himself from voting due to a potential conflict of interest, and the remaining members agreed.

#### **IV. OLD BUSINESS – After Public Hearing**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 891.1 and Adoption of Chapter 891.2, Registration of Family Child Care Homes, promulgated by Department of Human Services (DHS)  
See Section IV. Old Business D.
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 892.1 and Adoption of Chapter 892.2, Licensing of Group Day Care Centers and Group Child Care Homes, promulgated by DHS  
See Section IV. Old Business D.
- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 895 and Adoption of Chapter 895.1, Licensing of Infant and Toddler Child Care Centers, promulgated by DHS  
See Section IV. Old Business D.

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 17 Chapter 896 and Adoption of Chapter 896.1, Licensing of Before and After School Child Care Facilities, promulgated by DHS

Chair Cundiff suggests the board look at all four rules in its entirety. He introduces and thanks Ms. Dayna Luka, Acting Child Care Program Administrator (DHS). Discussion Leader Vice Chair Mary Albitz mentions the main feedback received during the public hearing was regarding the requirement for continued education for substitutes and volunteers in the proposed rule amendment. She also mentions there was a mention about “closed” lanais.

Ms. Tanya Enrico (DHS) explains that the public hearing was held July 30, 2021. There was 10 written testimony and 3 testifiers that attended the public hearing. The testimony provided was regarding the licensing of Infant and Toddler Child Care Centers, licensing of Group Day Care Centers, licensing of Before and After School Child Care Facilities.

Written testimonies were submitted; and comments were overwhelmingly in support of reinserting the language pertaining to the use of lanai space to be used in calculating the maximum number of children allowed on the license. Businesses testified as to how the removal of the language to allow for lanai space to be counted as usable space would negatively affect their operations.

The department acknowledges that while applying the rule regarding the use of lanai space in the calculation for license maximum incorrectly, we will need time to rewrite it so that the language is clear. The rule has been reinserted into the proposed rules that enclosed lanai space will be counted in the license maximum until we are able to rewrite the rule in concise language.

Ms. Tanya Enrico explains that DHS held discussion sessions with early childhood stakeholders beginning in 2015 to discuss health and safety training hours. Discussions on other proposed rules were held during quarterly DHS Child Care Advisory Committee meetings and during statewide informational sessions that were held between 1/2019 – 3/2019. Infant and toddler childcare center providers agreed that the 16 hours of on-going health and safety training over a 12-month period was a reasonable amount.

The recommendation to not require annual health and safety training for substitutes and volunteers was partially incorporated. The number of on-going health and safety training hours for substitutes and volunteers were reduced from 16 hours to 10 hours and 8 hours, respectively. The requirement for a substitute and volunteer to complete on-going health and safety training is to comply with the CCDBG Act of 2014 which requires caregivers to complete on-going health and safety training annually. Completion of on-going health and safety training hours increases the health and safety of children and the quality of childcare.

Vice Chair Albitz motioned to move all four items to the Governor for adoption. Mark Ritchie seconded the motion, and the Board members unanimously agreed.

## V. ADMINISTRATIVE MATTERS

### A. Discussion and Action on the Board's Investigative Taskforces Resulting Findings and Recommendations on the Proposed Phase II Website, in accordance with Section 92-2.5(b)(1)(B), HRS

Chair Cundiff, discussion leader, turns it over to Rosie Warfield, Manager of eGovernment Services, and Mark Moran of NIC Division. There were a few conversations with the task force and some of the findings from it were that the site works well but it's really focused on the meetings and the attendance side. The focus now is to target the small businesses and expanding the site to include more resources. As well as being able to send more targeting messaging through Mail Chimp.

In the proposal there is a full breakdown of all the details down to the hour. The main areas that the proposal will cover is a revised homepage to focus on specific ways small business can get involved with the board; de-emphasize focus on meetings. The second item is the meeting and agenda section. Add department level filtering to meetings, agendas, reports to allow users to drill down to which agencies are being discussed in each meeting (by agency or county) via filters/tags. The third updating some of the page content. Content updates for resource pages (resources, small biz., gov't and rulemaking process). Assist with content writing and updating rulemaking process graphics. For Mail Chimp, update signup form to include email preferences (by agency/county), create email campaign to send existing users to let them categorize their preferences, and design new email template to match site.

Ms. Warfield states that the next step is to approve the contract on February 3, 2022. This will be to start of the revision of the website. A final presentation will be available before June 2022.

Mark Ritchie motioned to accept the proposal from NIC. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

### B. Discussion and Action on the Board's Draft 2021 Annual Report Summary for Submission to the Hawaii State Legislature, under Section 201M-5(f), HRS

Ms. Palcovich adds that we are just waiting for the Chair's Message to finalize the report. Chair Cundiff noted that the total number of rules reviewed by the Small Business Regulatory Review Board since inception is 983 rules. Mr. Yamanaka asks is there a follow up on the "post" public hearing rules. Ms. Palcovich responds that yes, we do follow up and some of the rules may come to the board next year 2022. Some of the rules take a while to go through the process. The 2021 Annual Report Summary are rules reviewed this year to date.

Mr. Ritchie motioned to approve the Board's draft 2021 *Annual Report Summary*. Vice Chair Shick seconded, and the Board members unanimously agreed.

C. Discussion and Update on Chapter 92, HRS and Act 220, Session Laws of Hawaii 2021 regarding in-person meeting locations where members of the public can observe the remote meeting or testify in person

Chair Cundiff explains Act 220 begins January 1, 2022 and will affect in-person meetings. As the Legislature and boards have been doing during the COVID-19 pandemic, boards will be given the option under the Sunshine Law to hold remote meetings so that members of the board and the public may participate from their homes, workplaces, or other locations without having to show up in person at a physical meeting site.

While the bill thus expands public and board participation and access throughout our island state by allowing for remote meetings, it also recognizes that there is a digital divide that could affect members of the public or board who do not have the equipment, reliable internet connection, skills, or desire to participate online. Therefore, a board must also provide at least one physical location, with guaranteed connection via ICT to the remote meeting, where board members and the public can go to participate in person if they so desire. Although a board is not required to provide more than one physical location, it may choose to provide for the public's convenience additional physical locations with ICT connectivity to the remote meeting, but without being required to terminate the meeting if connectivity is interrupted or lost to those courtesy sites.

Conference Room 436 is the designated room for the public if they choose to attend. Dori and Jet'aime will be physically present during the Zoom meeting to satisfy the new Act 220 requirement.

D. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2022 Hawaii State Legislative Session

Mr. Yamanaka proposed Chair Cundiff be the designated representative for the board. Chair Cundiff accepts authority. Chair Cundiff proposes Mr. Ritchie also be a designated representative. Mr. Ritchie accepts to support new board members and to testify. He suggests Chair Cundiff be the SBRRB legislative support. Mr. Yamanaka adds that Second Vice Chair Shick is also a Honolulu representative and can be secondary, Mr. Shick accepts.

Chair Cundiff motioned to designate Ms. Palcovich to generate testimony and submit testimony on the board's behalf; for personal appearances and or representation of the board with testimony Chair Cundiff will be primary contact for delegation authority; Second Vice Chair Shick will be secondary, and Mark Ritchie an alternate. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

**VI. NEXT MEETING** - Thursday, January 20, 2022 at 10:00 a.m.

**VII. ADJOURNMENT** – Chair Cundiff made a motion to adjourn the meeting and Vice Chair Albitz seconded the motion; the meeting adjourned at 11:49 a.m.