

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

January 21, 2021

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

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Dr. Nancy Atmospera-Walsh
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto
- William Lydgate
- Jonathan Shick

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn

II. **APPROVAL OF November 19, 2020 MINUTES**

Second Vice Chair Yamanaka motioned to accept the November 19, 2020 meeting minutes, as presented. Vice Chair Albitz 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 Amendments to HAR Title 13 Chapter 256 Section 73 Kaneohe Bay Ocean Waters, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader Ms. Rodighiero stated that the rule changes are mostly housekeeping in nature with clarification of the regulations for the Kaneohe Bay ocean waters area, including restrictions and limitations to the educational permit requirements.

Mr. Ed Underwood, Administrator at DLNR's DOBOR (Division of Boating and Ocean Recreation) noted that Ms. Rodighiero summarized the rule changes well. Changes also clarify the rule's nonprofit requirements and cleans up language throughout. The public hearing was held on December 2, 2020 with one testifier from the neighborhood board that was in favor of the rule changes.

Second Vice Chair Yamanaka motioned to move the amendments to the Governor for adoption. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Kauai County Code Section 5A-11.4 of the Kauai County Code, Home and Related Exemption Rules, promulgated by County of Kauai – Department of Finance

Discussion leader Ms. Rodighiero stated that the rules were generally housekeeping measures; however, one of the biggest changes has to do with the amount of time to be physically present in a principal home or residence; this was being changed from 181 to 270 days.

Mr. Brad Cone, Real Property Tax Manager at the County of Kauai's Department of Finance, explained that an owner that currently has a home exemption was not affected by the rule changes; only new applicants would be affected. If an owner has a primary house, the owner will qualify for a home exemption. Further, if commercial or business activity is conducted from that house, instead of the homestead class tax, it would be considered to be one step above the homestead rate, or commercialized home-use.

Mr. Cone also noted that an off sight "home office" is not considered a commercial activity and will not affect the home exemption. Businesses, such as home daycare centers, would be in the "commercialized home-use" classification. Other examples of home business use include massage therapists, yoga studios, care homes, and any type of business that requires a commercial use permits. Overall, the changes made to the Kauai rules were intended to equalize with the other counties' rules.

Second Vice Chair Yamanaka motioned to move the proposed amendments to public hearing. Dr. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 218 Kakaako Reserved Housing Rules, promulgated by Hawaii Community Development Corporation (HCDA) / Department of Business, Economic Development and Tourism

Mr. Deepak Neupane, Director of Planning & Development at HCDA, explained that the proposed amendments will allow for the payment of equity sharing without the sale or transfer of the Reserved Housing unit. The shared equity concept was first incorporated into the rules in 1985 and its purpose was to allow HCDA to collect its share of the equity in the reserved housing unit with the owner when the unit is sold.

Because the current rules do not include a provision for payment of shared equity without sale or transfer of reserved housing unit, amendments add language to allow for the payment of equity sharing without sale or transfer of the reserved housing unit. Amendments are applicable to all reserved housing units in the Kakaako community development.

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

C. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 60.1, Air Pollution Control, promulgated by Department of Health (DOH)

Mr. Barry Ching, Program Specialist at DOH's Clean Air Branch, explained that most of the amendments are expected to clarify, update, and bring the rules in alignment with federal requirements and regulations. While a number of the rule changes may not have a negative impact on small business, some may actually benefit small business.

Clean Air Branch Manager, Ms. Marianne Rossio, explained the five proposed changes to the rules outside of the changes in alignment with the federal rules. The first category amends the status of non-major Covered Source Permits (CSP) to Noncovered Source Permits (NSP). This change will allow Hawaii to be consistent with the rest of the nation's states and will benefit small business because NSP's are simpler and have less annual and application permitting fees.

The second category will exempt nonroad engines from air permitting. The rationale for this is that nonroad engines are not stationary sources and DOH will no longer be regulating them in the stationary source permitting process. This would also benefit small business as they would no longer be required to go through the permitting process and pay the permitting fees but would be required to maintain a location log to verify that they are nonroad engines.

The third category adds test methods and removes the director's discretion in the determination of air violations; these changes are being proposed in order to address EPA's concerns and recommendations. The fourth category improves the existing regulations and adds new ones for open burning and agricultural burning. Although open burning is viewed as a tough issue, these rule changes attempt to balance acceptable uses of open burning while also minimizing the potential smoke impacts; it is anticipated that the changes will result in less fees. The fifth amendment will add several new categories of field citations.

In terms of outreach to the small business community, Mr. Ching explained that cooking and barbecuing in backyards are very big issues and concerns of DOH. As such, businesses that might be impacted by this rule are businesses that may, as an example, cook Huli-Huli chicken on the side of the road, of which, the rules narrow what can and cannot be done. In regard to how the on-road logs are being monitored, Ms. Rossio stated that there is an enforcement section in the branch that may ask to review the logs to verify non-road engines; inspectors monitor regularly.

Dr. Atmospera-Walsh motioned to forward the proposed amendments to public hearing. Mr. Ritchie 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

Chair Cundiff noted that there was nothing to report under administrative matters.

Hawaii's 2021 legislative session began January 20th. Members, James (Kimo) Lee and Harris Nakamoto's nominations to this Board are expected to be on the slate this year. There is also one vacancy on the Board. If any of the existing board members know of anyone that may be a good fit for this Board, please recommend him or her. It would be great to have a "full board" during this legislative session.

VI. NEXT MEETING - Thursday, February 18, 2021 at 10:00 a.m.

VII. ADJOURNMENT – Chair Cundiff made a motion to adjourn the meeting and Ms. Rodighiero seconded the motion; the meeting adjourned at 11:13 a.m.