

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING

January 16, 2020

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 10:02 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- Harris Nakamoto
- Mary Albitz
- James (Kimo) Lee
- Carl Nagasako

**ABSENT MEMBERS:**

- William Lydgate, 2<sup>nd</sup> Vice Chair
- Nancy Atmospera-Walch
- Jonathan Shick

**STAFF: DBEDT**

Dori Palcovich  
Jet'aime Alcos

**Office of the Attorney General**

Jennifer Polk-Waihee

### II. APPROVAL OF NOVEMBER 21, 2019 MINUTES

Mr. Lee made a motion to accept the November 21, 2019 minutes, as presented.  
Mr. Nakamoto 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 15, Chapter 120, Community-Based Economic Development Loan and Grants Programs, and Repeal of HAR Chapter 116, Community-Based Development Loan Program and HAR Chapter 126, Community-Based Development Grants Program, promulgated by Department of Economic, Development and Tourism (DBEDT)

Mr. Mark Ritchie, Branch Chief at DBEDT's Business Development and Support Division, explained that the proposed new rule was initially two separate rules, Chapter 116 Community-Based Development Loan Program and Chapter 126 Community-Based Development Grants Program; the new proposal combines the two rules.

One area where there is significant small business impact, albeit positive impact, is where the new rule requires small businesses to receive only one turndown; whereas the prior rules required two turndowns before the business could approach DBEDT for a loan. Overall, these two programs are good for small businesses to get off the ground.

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

#### **IV. NEW BUSINESS – Before Public Hearing**

A. Discussion and Action on Proposed Amendments to Part 5, Facilities Reserve Charge, Section III Applicability, promulgated by Department of Water, County of Kauai, as follows:

1. e. The Facilities Reserve Charge for a Guest House; and
2. f. The Facilities Reserve Charge for an Additional Rental Unit

Messrs. Edward Doi and Michael Hinazumi, Engineers from the Department of Water, County of Kauai, explained that the County recently changed an ordinance allowing guesthouses to be converted into rental units. Impact studies, in the past, addressed single family dwellings as size-limited rental units and were assessed an impact fee of \$14,115. Kauai County is looking to reduce this impact fee for the affordable housing market size-limits such as residential size-limits; this will be consistent with the charge-down of \$4,000.

Regarding any small business impact, it will likely help stimulate the development of these types of rental units and lower future connection fees. In 2015, a rate study was performed based on water usage and impact to the system. In questioning the offsets, as discussed in the rules, Mr. Hinazumi stated they were created by percentages. If the department is unable to do the facility, any developer has the option to use the facility and then will receive the offset for the FRC (facilities reserve charge).

Vice Chair Yamanaka agreed that Kauai County is the “high-test” in the state, and because the level is being reduced, that is the reason it can be considered “low income housing.” Regarding outreach in the community, there was a sizeable amount of feedback that was received by the community, all of which was positive. Regarding growth capacity, Mr. Doi explained that based on the County’s general projection of the area, it appears there is enough water to service the community in the next five to seven years.

Ms. Albitz made a motion to move the proposed amendments forward to public hearing. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments (Repeal) of Title 13 Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches, promulgated by Department of Land and Natural Resources (DLNR), as follows:

1. Subchapter 1, Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits
2. Subchapter 2, Suspension or Revocation of Operator Permits
3. Subchapter 3, Violation of Operator Permit Provisions
4. Subchapter 7, Special Operating Restrictions

Discussion leader, Ms. Mary Albitz introduced Ms. Meghan Statts, Assistant Administrator and Legal Fellow Mr. Todd Tashima from DLNR's Division of Boating and Outdoor Recreation (DOBOR), who explained that this proposal pertains only to Waikiki ocean waters - from Kewalo Basin to Diamond Head. The rule creates an operator card for anyone who wants to teach surf instructions or canoe paddling in Waikiki. Numerous surf schools were contacted and were asked by DOBOR to utilize the operator card for a while.

Overall, because businesses could not come to a consensus on changes to be made, DOBOR opted to repeal the operator permit requirements in the rules. The businesses that will directly benefit from the repeal are those operating commercially on Waikiki Beach and in Waikiki Ocean Waters. Further, removal of the operator permit requirements will allow businesses to independently review employee qualifications and remove the State from the qualification process. While "commercial" use permit requirements would remain, the State will not be involved in qualifying and certifying employees' ability to operate outrigger canoes and surfboards.

In response to an inquiry by Chair Cundiff as to how a small businessperson is qualified, Ms. Statts replied that First Aid and CPR training is required as well as practicing a certain number of years. These qualifications allow an instructor to provide better, safer, and proper service to clients. It is expected that most of the affected small businesses will likely support the rule change because it will provide businesses with more flexibility in hiring; DOBOR is planning to work closely with the Waikiki businesses.

Mr. Tashima explained that there is no need to go to public hearing because DOBOR is only repealing the subchapters, and Chapter 91-3, HRS provides agencies the authority to issue only public notice when it is a repeal. In order to repeal the existing rule, however, notice must be advertised in the paper. Therefore, DOBOR is requesting approval to publish notice but not to go to public hearing. Although it is believed that positive feedback is expected, if public notice results in comments that need to be responded to or acted upon, DOBOR will come back before this Board.

Vice Chair Yamanaka made a motion to issue public notice for repeal of the subject subchapters. Ms. Albitz 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, on the following:
  - a. Board to be Interviewed on ThinkTech Hawaii's "Business in Hawaii" scheduled on January 23, 2020

Chair Cundiff introduced Ms. Dailyn Yanagida, Consultant at ThinkTech Hawaii, and thanked her for attending today's meeting. He noted that this Board was on ThinkTech Hawaii at least twice before, but since then the Board has had several changes to report such as revamping the website and creating "Regulation for Review."

ThinkTech Hawaii is a 501(c) 3 organization. Part of its mantra is to bring small businesses to review as it is a great public service to get the message out about small business and to introduce available programs as many businesses are unaware of them. Beginning January 1<sup>st</sup>, the ThinkTech Hawaii studio was moved to the Finance Factors Building which allows its guests to be filmed remotely from wherever they are.

Various questions were sent to the Board by Ms. Yanagida in preparation of the segment; Chair Cundiff will provide responses prior to the recording. Also, an email with appearance guidelines will be forwarded. The Board's presentation can include up to 10 slides in JPEG format. The show will air live on January 23, 2020 on [www.thinktechhawaii.com](http://www.thinktechhawaii.com) at 2:00 p.m., and it will be uploaded to YouTube later in the evening. A link to the segment recording will be provided to DBEDT to post on the Board's website.

Mr. Nakamoto made a motion for the SBRRB to participate in ThinkTech Hawaii on Thursday, January 23, 2020, with Chair Robert Cundiff and Ms. Albitz representing the Board. Mr. Carl Nagasako seconded the motion, and the Board members unanimously agreed.

- b. 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 2020 Hawaii State Legislative Session

Mr. Nakamoto made a motion delegating Chair Robert Cundiff and Vice Chair Garth Yamanaka authority to testify on behalf of this Board during the 2020 Hawaii State Legislative Session. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

Chair Cundiff stated that the opening of Hawaii's legislative session was yesterday (January 15, 2020), and noted that it appears there is not much money left in the Board's budget; he requested that Mr. Carl Nagasako, ASO Administrator at DBEDT, explain the situation to the members.

Mr. Nagasako stated that this Board's budget is \$12,000 for the year. Although a ten percent (10%) budget "holdback" has been incurred for the remaining fiscal year 2020 on other DBEDT divisions and attached agencies, no holdback is incurred for this Board; therefore, the full \$12,000 is allotted.

He added that a big challenge for this Board is that its expenses are expected to increase due to the Board's projected spending of an extra \$15,000 for the remaining year. As a result, any excess monies spent over the allotted \$12,000 would need to come from another program's budget.

He suggested that one solution, which would be a benefit to the Board, is for the members to request additional monies from other resources. In response to Ms. Albitz's inquiry as to where those resources would come from, Mr. Nagasako stated that, although as a DBEDT Administrator he must support the Governor's budget (which did not include the Board's original \$12,000 budget or the extra \$15,000 funds request), the State Legislature is where to advocate for additional funds.

Legislative contacts would be House Representative Sylvia Luke, Chair of Finance, and Senator Donovan Della Cruz, Chair of Ways and Means. Also mentioned were Senator Gilbert Keith-Agaran who serves as Vice Chair of Ways and Means and House Representative Ty Cullen, Vice Chair of Finance.

As to whether this Board is restricted to any outside fundraising efforts, Deputy Attorney General Polk-Waihee stated that caution is needed for the Board to initiate outside fundraising efforts; there may also be ethical issues involved.

Chair Cundiff confirmed that DBEDT must support the Governor's budget. However, one option would be for the Board members to approach State legislators; it would be helpful if any of the Board members personally know legislators on the Finance and Ways and Means Committees.

Finally, Chair Cundiff mentioned that Senate President Kouchi recently submitted three Senate member nominations to Governor Ige - Nancy Atmospera-Walch, Taryn Rodighiero from Kauai, and Jonathan Young.

c. Meetings with Board Members and State Department Directors

Chair Cundiff indicated that this an on-going agenda item and he encouraged the members to continue to meet with state department directors.

- VI. **NEXT MEETING** – The next meeting is scheduled for Thursday, February 20, 2020 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.
- VII. **ADJOURNMENT** – Mr. Lee made a motion to adjourn the meeting and Mr. Nagasako seconded the motion; the meeting adjourned at 11:00 a.m.