

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

November 20, 2013

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Shubert-Kwock called the meeting to order at 9:32 a.m., with a quorum present.

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Anthony Borge
- Leslie Mullens
- Barbara Bennett
- Kyoko Kimura
- Howard Lum
- Craig Takamine
- Ken Kitamura

ABSENT MEMBERS:

- None

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

II. APPROVAL OF OCTOBER 30, 2013 MEETING MINUTES

Second Vice Chair Mullens made a motion to adopt the October 30, 2013 meeting minutes as presented, Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

III. NEW BUSINESS

- A. Proposed Amendments to Hawaii Administrative Rules Title 17 Chapter 799 Preschool Open Doors Program (DHS)

Mr. Scott Nakasone, Assistant Administrator at DHS's Benefit, Employment and Support Services Division, explained that amendments to this chapter are the result of statutory changes established through the enactment of Act 169, SLH 2013. The changes will assist in providing childcare to an estimated 1,200 to 5,000 children, from low- to moderate-income families, and special needs children. These children would otherwise be unable to attend public school kindergarten in the 2014 through 2015 calendar year because their birth dates are after the kindergarten eligibility date required by law. As families of these children would need to absorb the full cost of an additional year of childcare, ultimately resulting in a financial hardship, this program will allow children prior to their entry into kindergarten to attend preschool to assist in providing and preparing for a child's developmental growth.

It was noted that the payment arrangement is an agreement between the care provider and the parents. Childcare payments are issued one month at a time and paid directly to the

caretaker, to the preschool on behalf of the caretaker, or payments may be made directly to the care provider. The impact on small business; i.e., child care providers, is nominal as DHS anticipates an expansion of preschool enrollment with minimal impact on preschool operators in order to comply with the required school readiness assessment requirements.

Mr. Lum made a motion that this request proceed to public hearing. Second Vice Chair Mullens seconded the motion, and the Board members unanimously agreed.

- B. Proposed new rules Sections 3-81-20 General Right of Inspection, 3-82-38.26 Bottle Service for On-Premise Consumption, 3-82-41.3 Management or Operating Agreements, and 3-84-73.1 Quality of Liquor, and Proposed Amendments to Sections 3-80-1.1 Definitions, 3-81-17.53 License Fees; When Due and How Calculated, 3-81-17.54 Gross Sales Reports, 3-17.55 Additional License Fees on Gross Sales, 3-82-31.8 Recorking, 3-82-38.25 Registration of Employees, 3-82-38.9 Licensee and Manager in Charge of Premises, 3-82-38.25 Restrictions or Conditions on Licenses, 3-82-41.2 Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members, 3-83-53.1 License Applications; Notice of Hearing; Affidavits, 3-83-61.1 Renewal of Existing License, 3-84-62 Architectural Requirements Alternation of Licensed Premises, 3-84-72.2 Premises Lighting; Doors, 3-84-78.01 Conduct of Employees, 3-84-78.01 Conduct of Employees, 3-84-78.52 Stacking of Drinks, and 3-85-91.12 Licenses under Safekeeping (Liquor Commission – City and County of Honolulu)

Ms. Anna Hirai, Acting Administrator at the Liquor Commission of the City and County of Honolulu, explained that these rules have not been updated since 2008, which is one of the reasons for the large number of proposed amendments. This will be the first of two undertakings for rule amendments by the Liquor Commission during this fiscal year. In addition to this Board, the proposals must go to public hearing and the City Council for approval. This proposal represents recommendations consisting of over twenty changes, derived from the Liquor Commission's five members, 1,400 licensees, licensee representatives, staff, and others. Historically, the most useful feedback to the five-member commission is received from the public hearings.

Some of the specific changes discussed included definition changes of "manager," "go-go dancer," the term actor used in the definition of "sexual contact," "stacking of drinks," and "gross sales reports." In regards to the latter, Ms. Hirai stated that the wholesale licensees requested additional time in which to file an interim sales report for the period July 1st to December 31st; it is due no later than March 1st of the following year. The extension to March 1st would not unduly hamper the administration in determining the upcoming fiscal year's deductible in the license renewal cycle. Ms. Kimura stated this section, which provides, "if there is no sales price related to the complimentary drink, the licensee shall report the complimentary drink's value at four (4) times the amount of liquor purchase," seems unreasonable. Ms. Hirai stated that assuming that the bottle is purchasable, as long as there is an established sales prices, it can be viewed as a complimentary drink, and the licensee should be able to deduct that amount in the room rate.

Another change discussed was "general right of inspection," which has been streamlined due to the current overbroad definition of the existing rule. Under this section, the phrase

“licensee shall provide an investigator immediate access to every part of the licensed premises,” was questioned. Ms. Hirai noted that she believed there should be some discretion as to the investigator on site regarding immediacy of the request. It was noted that licensing application inspections are done by appointment but premise inspections are not. Under the “quality of liquor” section, it prohibits the transfer of liquor from its original container to any other container. Under “stacking of drinks,” it was noted that the amendments were adopted by Hawaii County’s stack rule’s objective measurements. Under this section, volume amounts and container descriptions were revised to comport with standard industry practices such as size and type of glassware or common beer bottle sizes.

Under the section, “recorking,” it provides that “any licensee engaged in meal service shall allow a patron who has purchased or brought unto the licensed premises wine, liquor or beer for consumption with a meal to remove the partially consumer product from the licensed premises, which shall be recorked or resealed in its original container.” Ms. Kimura was concerned about this wording and stressed that the licensee should have a choice in the matter. Ms. Hirai stated that if the patron purchased or brought in their own bottle and wants to remove it from the premises, it can be permitted unless prohibited by HRS, i.e., if the patron is so inebriated they would not be permitted.

Vice Chair Borge questioned whether there was any movement to have a set of standardized rules for all the state’s liquor commissions; Ms. Hirai replied that this has been an issue for a long time and is currently being looked into and worked on. Mr. Gerald Takase, Director of Liquor Control for the County of Hawaii, was introduced to the members. He stated that the standardization of the different counties’ liquor rules has been discussed, but in many cases, the small businesses are opposed to standardizing. However, even though the overall standardization may be inefficient for all the counties, there is some reciprocity with the neighbor island counties.

The impact on small business is not expected to be overly negative or burdensome. However, licensees and applicants will experience an increase in compliance with the proposed rules; it is also important that each licensee continue to stay in good standing within their counties. Increased fees for liquor licenses will be discussed and reviewed at the next proposed rule amendment before this Board.

Second Vice Chair Mullens made a motion to recommend that the Board approve the request to go out to public hearing with the additional recommendation that under Section 3-82-31.8, Recorking, clarification be made that recorking to its original bottle is not the mandatory responsibility of the licensee, but that the licensee may choose to re-cork or to allow the patron to remove the left-over liquor from the premises. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

VII. ADMINISTRATIVE MATTERS

A. Proposed 2014 Board Meeting Schedule

Chair Shubert-Kwock stated that at the onset of this board, the members agreed to meet on every third Wednesday of the month. However, there has been some concern due to absences of some members which has caused quorum and scheduling problems. It

would be helpful if the members can confirm their attendance in a reasonable period of time, and if members do not have the time to commit, they are welcome to tell the members so that it does not conflict with other members who are willing to commit the time.

Second Vice Chair Mullens stated that the members are all business owners; when business owners are not in the office they are not doing business. Neighbor island members especially are gone from approximately 5:00 a.m. to 5:00 p.m., which means they are out of a whole day of business. She explained that when there is a pressing business issue that cannot be rescheduled, her business takes precedence. There are currently four meetings that she is unable to attend during the 2014, which she provided to DBEDT staff.

Vice Chair Borge made a motion to pass the recommended 2014 board meeting schedule. Ms. Kyoko seconded the motion, and the Board members unanimously agreed.

B. Board Business Cards

Chair Shubert-Kwock explained that at the last meeting, the board members agreed to have business cards provided for the members that represent this board; she shared her board business card with the members. For those who are interested in having board business cards printed for them, they should let Ms. Palcovich know.

C. RegAlert, electronic email alert system for announcement of proposed and amended administrative rules impacting small businesses

Chair Shubert-Kwock stated that RegAlert was reviewed at the last meeting in regards to its reactivation. The logistics of RegAlert was discussed with concerns that include who sends out the alerts, when they are sent out, who are the RegAlert partners, what work is involved in its reactivation and monitoring of testimonies, what are the timeframes involved. As it was determined that there are several factors relating to RegAlert that are still undefined, it was suggested that a committee be created to develop a solid plan for the reactivation of RegAlert.

Second Vice Chair Mullens made a motion that an investigative committee be formed to explore RegAlert in order to develop a solid plan and clear definition to include exactly what the RegAlert system will do, how it will be communicated, and how the testimonies will be handled. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

Second Vice Chair Mullens made a second motion that the RegAlert investigative committee members include Chair Shubert-Kwock, Vice Chair Borge, and Mr. Kitamura. Mr. Takamine seconded the motion and the Board members unanimously agreed.

D. Board's Draft 2013 Annual Report, pursuant to Section 201M-5, Hawaii Revised Statutes

The draft 2013 annual report was reviewed. Its format is similar to past reports; the "Chair's Message" will be amended.

Ms. Bennett made a motion to accept the draft annual report with the recommended changes approved as the final report; Vice Chair Borge seconded the motion. Chair Shubert-Kwock, Vice Chair Borge, Ms. Bennett, Ms. Kimura, Mr. Lum, Mr. Takamine, Mr. Kitamura agreed to the motion; Second Vice Chair Mullens abstained and the motion passed.

E. Discussion of Board's Brochure and Hawaii Bill of Rights Brochure

It was suggested that each member, on a monthly basis, commit to distributing and tracking the board brochures within their communities. Vice Chair Borge added that the more information that can be distributed to the community the more the small business community will know what this board is about.

Chair Shubert-Kwock referred to the Hawaii Small Business Bill of Rights brochure, which was previously created by this board and noted that it is a good brochure that can be distributed at professional gatherings. Reference to the Bill of Rights brochure will be inserted into the board's brochure.

F. Chair's Report – Exhibit A

Chair Shubert-Kwock stated that she and Ms. Palcovich work very closely on a regular basis between the monthly meetings and discussed the various activities on the chair's report for the months of October and November.

The members reviewed the memorandum, approved to be written by the Chair at the October board meeting to Mr. Kalbert Young, Director of Budget and Finance, entitled "DBEDT Budget Request for the Small Business Regulatory Review Board." Second Vice Chair Mullens voiced concerns about the memo and expressed that it was not speaking on her behalf as a board member. She said the memo itself was "beautifully done," and the first page was fine, but she was worried about some of the language in the second page, which in her opinion, was defamatory. While she believes a couple of the members may feel frustrated, as stated in the memorandum, it was not her position nor did the members vote on the specific language. Further, she believes that everyone on the board should have an opportunity to voice their opinions for future correspondence.

Chair Shubert-Kwock replied that she wants to be candid about her opinion and has historical information about this board. Ms. Kimura stated that going forward, the board should avoid negative comments. Mr. Takamine suggested that for future writings, the chair take into consideration all the members' opinions and to qualify the opinions of the chair and the board members. Ms. Bennett stated it is much better to have a positive message than a negative message, but that she has had frustrations with this board.

VI. ADJOURNMENT

Ms. Kimura made a motion to adjourn the meeting at 12:15 p.m. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

IX. NEXT MEETING

Next meeting is scheduled for 9:30 a.m., Wednesday, December 11, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii.