

Small Business Regulatory Review Board

MEETING MINUTES October 19, 2023

ZOOM RECORDING

- I. **CALL TO ORDER:** Chair Albitz called the meeting to order at 10:03 a.m., with a quorum present.

MEMBERS PRESENT:

- Mary Albitz, Chair
- Jonathan Shick, 2nd Vice Chair
- Dr. Nancy Atmospera-Walch
- James (Kimo) Lee
- Sanford Morioka
- Tessa Gomes
- Mark Ritchie

ABSENT MEMBERS:

- Robert Cundiff, Vice Chair
- Garth Yamanaka
- William Lydgate

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

John Cole

II. **APPROVAL OF September 21, 2023 MINUTES**

Mr. Lee motioned to accept the September 21, 2023 meeting minutes, as presented. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 16 Chapter 39, Securities, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion Leader Ms. Gomes stated that the subject rules are post-public hearing and appear to have little impact on small businesses. Mr. Keola Fong, Securities Enforcement Attorney at DCCA explained that the amendments require an investment advisor representative who is registered in Hawaii to receive 12 credits of continuing education each year to maintain his/her registration. The changes will align Hawaii to be consistent with national requirements. In addition, non-substantive changes, such as formatting, are also being made to the rules.

At this Board's pre-public hearing meeting, thirteen other states had adopted these rule requirements; it is now up to sixteen with Hawaii being the seventeenth state to adopt these requirements.

Only positive feedback was received from the stakeholders during the rulemaking process, and at the public hearing, although no one showed up, one letter of support was received from the Financial Planning Association. As no issues were raised, no changes were made to the rules. Second Vice Chair Shick stated that given that the new fees are less than \$100 per year, the cost is reasonable.

Mr. Ritchie motioned to move the proposed amendments to the Governor for adoption. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 31, Molokini Shoal Marine Life Conservation District, Maui, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader and Second Vice Chair Shick stated that the following three rules are post public hearing, and that there appears to be no major issues with them. Mr. Kealii Sagum, Legal Research Specialist at DLNR's Division of Aquatic Resources (DAR), provided a short presentation on the three proposals.

Changes to Chapter 31 clarify that special activity permits will be allowed for a maximum duration of one year in length with allowable purposes to conform with special activity permit authority. Other changes include clarifying that DLNR may issue a marine life conservation district use permit for commercial activity within the Molokini Shoal marine life conservation district.

Changes also include updating the permit terms and conditions, which represent a new expiration/renewal date of December 31 every two years, updating the fee schedule from a flat rate to a tiered fee schedule, removing the requirement to demonstrate active commercial vessel operation for permit renewal and non-substantive changes.

Testimonies provided at the public hearing supported the enhanced enforcement and the proposed protections. Testimonies also supported the overall goal of the day-use mooring program; however, any of the proposed suggestions for this program were beyond the scope of the current rulemaking package.

Mr. Ritchie motioned to move the proposed amendments to the Governor for adoption. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 230, General Provisions, promulgated by DLNR

Mr. Kealii Sagum, Legal Research Specialist at DLNR's DAR, explained that the proposed amendments for Chapter 230 include adding and amending specific definitions for clarity which came from the direction of the Attorney General.

Second Vice Chair Shick motioned to move the proposed amendments to the Governor for adoption. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 257 promulgated by DLNR

Mr. Kealii Sagum, Legal Research Specialist at DLNR's DAR, explained that amendments for Chapter 257 include housekeeping measures throughout the entire chapter for clarity and consistency with other chapters and making minor grammatical and stylistic changes. Another change will remove the time limit exception for when there are no boats waiting to use the day-use mooring buoy.

Additional changes involve day-use mooring buoy installation, locations, rafting prohibitions, and formatting changes for liability, safety, and enforcement. Also updated are the reference maps, boundary descriptions, the addition of commercial use restrictions, and a provision for providing exceptions for commercial users who are paying the ocean stewardship user fee.

The public hearing was hybrid via Zoom and in-person at the DAR Maui Office site; it was also live-streamed on YouTube for those viewers interested in only watching the hearing and not providing testimony. Six testimonies in support were received at the hearing.

Mr. Morioka motioned to move the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to HAR Title 17 Chapter 799, Preschool Open Doors Program, promulgated by Department of Human Services (DHS)

Mr. Scott Nakasone, Assistant Division Administrator at DHS, explained that the proposed rules will effectuate the expansion of the Preschool Open Doors (POD) Program. The changes include the addition of two new sections, Section 17-799-12.1 Accreditation requirements and Section 13.1 Method of computing family unit's co-payment.

The changes in these two sections will amend the purpose of the subchapter to reflect the potential number of years a child could receive POD childcare payments from up to one year to up to two years. Changes will also add, delete, and amend existing definitions, add three-year olds to the program and establish application priority ranking to this group.

Other changes will establish 300% of the federal poverty guidelines as program eligibility income limits and updates annually on January 1, increases the monthly childcare subsidy payments to \$1,200 maximum for unaccredited care and \$1,500 maximum care, and establishes family co-payment of childcare as 0 – 7% of the family's childcare cost.

Mr. Nakasone noted that the positive impacts to small business are that it will increase the family eligibility limit and annual adjustment which will result in more families becoming eligible for POD. The lowering of family co-payments will result in having to pay less out-of-pocket for childcare, and an increase to the monthly childcare subsidy amount will result in a greater amount of childcare to families. Several negative impacts to small business were discussed including all preschools that accept enrollment of a child eligible for POD must be

accredited within seven years. Existing preschools must start the accreditation process by July 1, 2029 and be accredited by July 1, 2034.

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

B. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 217 Mauka Area Rules, promulgated by Department of Business, Economic Development and Tourism (DBEDT)

Mr. Craig Nakamoto, Executive Director, and Mr. Ryan Tam, Director of Planning at DBEDT's Hawaii Community Development Corporation (HCDA), discussed the updates and proposed amended rule changes to the Kakaako Mauka Area Rules; this includes HCDA's community development districts, the statewide districts and projects, and transit-oriented development infrastructure and other projects.

The Mauka rules amendment objectives, which have been worked on for the past several years, are intended to reflect the needs of the community, reduce government red tape, promote livable, walkable communities, incentivize zoning to promote the development of community benefits, and increase reserve housing.

The changes will also clarify various definitions, update floor area definitions to include overhangs, canopies with more than 50%, address conflicts between window transparency requirements and energy code, add strategies to activate building frontage walls, and allow for preservation of significant properties that are no longer present. While the main change is streamlining the permitting process, the second main change has to do with parking reform as 25% to 30% of the parking stalls in Kakaako are under-utilized.

Regarding Second Vice Chair Shick's inquiry into the imposition of fees, Mr. Tam responded that there is a \$50 increase in the base-line fee. In response to Chair Albitz's question, HCDA has not received any negative feedback at the public meetings from small businesses largely due to the extensive community outreach; this includes the neighborhood board meetings and the Kakaako Association meetings.

Overall, HCDA is expecting to achieve community benefits through the rule changes by allowing for larger projects in exchange for public benefit.

Second Vice Chair Shick motioned to move 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, Hawaii Revised Statutes (HRS)

1. Discussion with Becker Communications' Representative about creating a YouTube Video for the Board's Outreach Purposes

Due to Becker Communications needing to leave the meeting to attend another DBEDT gathering, this line item is deferred until the next board meeting.

During the meeting, the following ideas and suggestions were discussed by the members for the creation of the Board's YouTube Video:

- Filming one of the board meetings without sound but showing testifiers and board members at a board meeting. Thus, video would view the meeting with a "voiceover" explaining what the Board is and what it does, perhaps with Hawaiian music playing in the background.
- Addressing some of the bigger issues that this Board has encountered over the years and the resulting outcome and/or the impact of those issues, potentially with pictures of before and after.
- Including in the video some of the small businesses and industries that this Board represents.
- Publishing a series of short, 4 or 5 videos, with the first one being an introduction to the Board and the second one highlighting the businesses the Board represents, etc.

2. Presentations to Industry Associations

DBEDT staff attended Oahu Wedding Association's annual meeting this week, of which, board member Ms. Gomes is the president. Second Vice Chair Shick will be attending the upcoming Hawaii Chamber of Commerce's After Business Hours event and will plan to distribute the Board's brochures.

3. Staff's Small Business Outreach

The Board's brochure is being mailed out weekly to appropriate small businesses listed in the weekly *Pacific Business News*.

VI. NEXT MEETING - Thursday, November 16, 2023 at 10:00 a.m., in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.

VII. ADJOURNMENT – Second Vice Chair Shick motioned to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:36 a.m.