

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

October 17, 2019

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 10:03 a.m., with a quorum present.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- William Lydgate, 2nd Vice Chair
- Harris Nakamoto
- Mary Albitz
- Jonathan Shick
- James (Kimo) Lee
- Carl Nagasako

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF SEPTEMBER 19, 2019 MINUTES**

Mr. Shick made a motion to accept the September 19, 2019 minutes, as presented. Ms. 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 Part IV, Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Sections 30 to 36, promulgated by County of Kauai Department and Parks and Recreation

Discussion leader and Second Vice Chair Lydgate summarized the past several years of Kauai's boating activities and noted that the proposed rules before this Board received much discussion among the commercial boaters before and after the public hearing.

Mr. Patrick Porter, Director of the County of Kauai's Department of Parks and Recreation, explained there are two government entities that govern the commercial boating activity in Hanalei Bay, Kauai - the State's Department of Land and Natural Resources and the County's Department of Parks and Recreation. Additionally, commercial boating activities

are governed by the County Planning Department's Special Management Area (SMA) when commercial boating permits are requested.

The Department of Parks and Recreation reviewed the proposed administrative rules with Mr. Mel Wills and other commercial boaters. Although many, but not all, of the recommendations by the commercial boaters were agreed upon, it now appears that the stakeholders are at a place where they are content with the rule proposal as presented.

In addition to various formatting changes made to the rules after the public hearing, other changes include modifying the period that commercial boating activities would be permitted, i.e., one-half hour before sunrise and one-half hour after sunset. Also included in the changes was an additional area for loading and unloading of passengers and provisions.

Testifier Mr. Mel Wills, North Shore Boat Representative from Holo Holo Charters - Hanalei, appreciated this Board for all the work it has done for the commercial boaters. After several meetings with the County, Mr. Wills believes everyone is "on board" with all but one of the rule changes. The only request left to resolve, on behalf of the boaters, is to remove the "no Sundays" restriction in the rules to read "commercial boating activities must comply with the SMA permit."

Mr. Porter explained, and Second Vice Chair Lydgate concurred, that eliminating the Sunday restriction in the rules was one recommendation requested by the commercial boaters that could not be incorporated into the rules despite the business community's strong interest in the ability to operate on Sundays. This is because it is a condition of the SMA use permit, governed by the Planning Department. Therefore, because the SMA use permit has its own internal approval process, whatever is decided by Planning would trump any items not in alignment of the final agreement.

Mr. Porter added that although all trailer parking was in the mauka lot of the road, the County of Kauai recently purchased the road's makai side. Pursuant to the sales agreement, there can be no commercial boating activity in this area from 10:00 PM to 5:00 AM, which must be complied with; however, this restriction has brought concerns to the dynamics and use of the park.

Although this restriction is currently being enforced, Mr. Wills explained that the land in question is where the boaters originally operated from, and this activity went away with the sale of the property. While no rental cars, tour buses, or vendors are allowed on this property, commercial boaters are parking on a public road in front of residential homes, which is clearly not the best placement for the boaters to park equipment and vehicles.

Regarding a question by Ms. Albitz about egress and ingress, Mr. Wills responded that these terms were not defined for passengers, only for equipment and use of the ramp. Although there was some concern by Parks and Recreation, these issues were worked out prior to this meeting.

Upon reviewing the information at hand, Chair Cundiff stated that there are potentially two options Board members can take. The first option is to defer the Board's action until a later meeting and pass the rules out upon review of the "final" version. The second option is to pass the rules out as presented to the Mayor with the recommendation to accept the rules subject to any changes made by the County of Kauai's Planning Department.

Second Vice Chair Lydgate made a motion to move the proposed administrative rule amendments onto the Mayor for adoption subject to any subsequent changes made by the County of Kauai's Planning Department. Ms. Albitz 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 11 Chapter 5, Environmentally-Related Illness and Injury Reporting, promulgated by Department of Health (DOH)

Discussion leader Mr. Nakamoto followed-up with Ms. Diana Felton, DOH's State Toxicologist, the purveyor of the proposed rules. The amendments, which are after the public hearing, relate to the mandatory reporting of exposure to certain heavy metals and pesticides.

All the affected businesses (i.e., laboratories) were contacted by DOH to make sure they were aware of the changes and to follow the new requirements. As there was no attendance at the public hearing and no comments were submitted, DOH felt comfortable with proceeding with finalizing the proposed changes.

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

IV. 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. Discussion of Board Member Nominations pursuant to Section 201M-5, (b) HRS, Small Business Regulatory Review Board; Powers

Chair Cundiff announced that there are currently two board member positions at-large. Both require the Senate's nomination and can represent any county. Recommended names may be provided to the Senate by this Board; the Senate President will review them and either concur or not.

There are also three members with terms expiring June 30, 2020, Ms. Albitz, Ms. Atmospera-Walch, and Chair Cundiff. Ms. Albitz and Ms. Atmospera-Walch have already registered with the Boards & Commissions. In addition, Mr. Nakamoto's term is being "held over" until June 30, 2021.

Chair Cundiff noted that Mr. Shick had entertained an interested party in becoming a member but was not in attendance today; he encouraged Mr. Shick to follow-up with the individual. He also encouraged all the members to try to identify potential nominees that might be a good fit for this Board. Mr. Shick confirmed that Hawaii Chamber of Commerce is currently attempting to recruit potential board members. He is also working with his BNI Chapter to see if nominees can be found.

Also, Second Vice Chair Lydgate has an upcoming meeting with the president of the Kauai Chamber of Commerce to see if he may be able to stir up some interest in membership. In addition, Ms. Albitz has been actively looking for potential members.

Mr. Nakamoto made a motion to send to the Governor a letter of support for the nomination of Ms. Albitz to be a member of this Board. Vice Chair Yamanaka seconded the motion and all Board members agreed, except for Ms. Albitz who abstained.

Mr. Shick made a motion to send to the Governor a letter of support for the nomination of Ms. Nancy Atmospera-Walch to be a member of this Board. Mr. Nakamoto seconded the motion and the Board members unanimously agreed.

Second Vice Chair Lydgate made a motion to send to the Governor a letter of support for the nomination of Mr. Robert Cundiff to be a member of this Board. Mr. Nakamoto seconded the motion and all Board members agreed, except for Mr. Cundiff who abstained.

Regarding the monthly board meetings, Chair Cundiff stated that Deputy Director Randall Tanaka expressed an interest in this Board conducting a meeting on a neighbor island, i.e., Kauai or Maui.

Second Vice Chair Lydgate believed it is a great idea that the Board meet on a different neighbor island once a year. Mr. Nakamoto concurred and suggested that while on a neighbor island that the Board engage with a neighbor island chamber of commerce. Mr. Nagasako interjected that the Board's budget is \$12,000 and most of the funds are spoken for.

Deputy Attorney General Polk-Waihee mentioned that should the Board go to a neighbor island, the Board's work, Sunshine Law and ethics must all be balanced and adhered to; the Board's finances are also an issue. Chair Cundiff suggested that the Board investigate this matter in an executive session at a future meeting for legal advice and discussion.

b. Meetings with Board Members and State Department Directors

Ms. Albitz is meeting with DLNR today. Chair Cundiff met with Director McCartney who is extremely supportive of this Board.

V. NEXT MEETING – The next meeting is scheduled for Thursday, November 21, 2019 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

VI. ADJOURNMENT – Mr. Nakamoto made a motion to adjourn the meeting and Mr. Shick seconded the motion; the meeting adjourned at 10:47 a.m.