

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

September 16, 2015

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 1:03 p.m. with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge
- Harris Nakamoto
- Barbara Bennett
- Kyoko Kimura
- Robert Cundiff
- Phillip Kasper
- Nancy Atmospera-Walch
- Garth Yamanaka
- Mark Ritchie

**ABSENT MEMBERS:**

- None

**STAFF:** DBEDT  
Dori Palcovich

Office of the Attorney General  
Margaret Ahn

### II. APPROVAL OF AUGUST 19, 2015 MINUTES

Second Vice Chair Bennett made a motion to accept the August 19, 2015 minutes, as presented. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

### III. OLD BUSINESS

- A. Discussion and Action on Proposed Amendments to HAR Title 16, Chapter 78, Cosmetology, and the Small Business Statement After Public Hearing, promulgated by Department of Commerce and Consumer Affairs (DCCA)

As no one from DCCA attended the meeting, Ms. Kimura explained that this Board reviewed the proposed amendments in March 2015, prior to public hearing; one person attended the public hearing with no testimony provided. Under the amendments, states are required to regulate beauty schools by showing that the laws of the licensing authority differentiate between licensing approvals provided to secondary versus post-secondary institutions. She noted that the rules are good for small businesses because their compliance will allow Hawaii-licensed beauty schools to continue to participate in federal student aid programs.

Ms. Kimura made a motion 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 Chapter 23. "Commercial Boating Activities," Article 3, Kauai County Code 1987, Part IV, Section 33 "Time of Use," and Part IV "General Conditions," Sections 36(f), 36(u), and 36(v), promulgated by County of Kauai Department of Parks and Recreation

Discussion leader, Second Vice Chair Bennett, introduced and welcomed Mr. Lenny Rapozo, Director of the County of Kauai Department of Parks and Recreation. Mr. Rapozo explained that the amendments involve changes in Kauai's recreational areas for boating and surf schools; they are a collaboration of the County of Kauai, the State of Hawaii's Department of Land and Natural Resources' Division of Boating and Ocean Recreation and the Department of Parks and Recreation.

Changes to the boating rules began in 2014 and allow for five permits per year. It also allows the boating industry to legally operate within a county facility, which is expected to improve business. In regards to the amendments to the surf schools, it is believed that the impact to small business is minimal due to the proposed drop-off and pick-up areas at the beach parks; two rangers were hired to enforce the administrative rules. Amendments to both the boating industry and the surf schools will also add intermediary steps prior to revocation, with fines as an added cost. However, fines are assessed only if the companies are found to be in noncompliance; total revocation would be the end result for repeated violations.

Chair Borge stated that it was great that the Parks and Recreations Department worked closely with the State, as jurisdictional problems can occur with the Counties and the State. Second Vice Chair Bennett added that the Kauai Parks and Recreation Department did its homework and due diligence in promulgating the proposed amendments.

Mr. Cundiff made a motion to support the proposed amendments to proceed to public hearing; Mr. Yamanaka seconded the motion. Mr. Kasper recused himself due to a potential financial conflict of interest; all remaining members agreed.

- B. Discussion and Action on Proposed Amendments to Title 3, Subtitle 6, Chapter 80, General Provisions, Section 1.1, Definitions," for new definition of "Dancing," promulgated by City and County of Honolulu - Honolulu Liquor Commission

Discussion leader, Mr. Cundiff, introduced Ms. Anna Hirai, Acting Administrator at the Liquor Commission of the City and County of Honolulu, who introduced Mr. Don Pacarro, the Honolulu Liquor Commission's newest Administrator. Ms. Hira explained that the purpose of the amendments is to comply with the requirements of Act 136, Session Laws of Hawaii 2015, as it pertains to adding a definition of dancing in premises licensed to sell liquor for consumption, to be effective October 1, 2015. She noted that 522 of the total 1,388 licensees will be impacted by this amendment; there is a public meeting scheduled for October 8, 2015.

Ms. Hirai also explained that because Honolulu Liquor Commission is the only county that permits “exotic” dancing on licensed premises, the definition of dancing is modified slightly from the other counties’ definition. Honolulu’s definition of dancing is “pertains to a customer on the licensed premises, means the movement of customer’s body in a way that goes with the rhythm and style of music that is being played.”

Mr. Cundiff made a motion to support the proposed amendments to proceed to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to Title 08, Subtitle 01, Chapter 101, “Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui,” Subchapter 1, General Provisions, Section 5, “Definitions,” for new definition of “Dancing,” promulgated by County of Maui Department of Liquor Control Services

Ms. Traci Villarosa, Deputy Director for the County of Maui Liquor Control, explained the back story regarding the creation of the definition of dancing. The County of Maui took the definition of dancing straight from *Merriam-Webster Dictionary*, and does not reference “customer,” as does the definition of the City and County of Honolulu’s Liquor Commission. Mr. Cundiff stated that although dancing would be added to the counties’ definitions in the rules, there is no consequence or enforcement behind it. Ms. Villarosa confirmed that any such violation would not go in front of the Board of Maui Liquor Control or would it result in fines; the Maui Liquor Control regulates liquor, not dancing.

Mr. Cundiff made a motion to support the proposed amendments to proceed to public hearing; Ms. Atmospera-Walch seconded the motion. Mr. Kasper and Ms. Kimura recused themselves due to potential financial conflicts of interest; all the remaining Board members agreed.

D. Discussion and Action on Proposed Amendments to Rules and Regulations 1.1, “Definitions,” for new definition of “Dancing,” promulgated by County of Kauai – Department of Liquor Control

Chair Borge explained that the proposed amendment for the definition of dancing is the same as that of the County of Maui Department of Liquor Control Services, (See Section IV. New Business C).

Mr. Nakamoto made a motion to support the proposed amendments to proceed to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

E. Discussion and Action on Proposed New Rules, Part 5, “Facilities Reserve Charge,” promulgated by Department of Water, County of Kauai

Discussion leader Second Vice Chair Bennett explained that an amendment to the existing proposed rules was received by this Board after the agenda was posted. In accordance with Sunshine Law, an affirmative two-thirds vote of the board members must be made to include it on today’s agenda. As such, Second Vice Chair Bennett made a motion to approve including on the agenda, deleting Section VII, Facilities Reserve Charge from Part 4, Fixing

Rates for the Furnishing of Water Service in the County of Kauai, and replacing Section VII into the newly created Part 5, Facilities Reserve Charge in the County of Kauai. Mr. Nakamoto seconded the motion and the Board members unanimously agreed.

Mr. Kirk Saiki, Manager, Ms. Andrea Suzuki, Deputy County Attorney and Edward Doi, Engineer, from the Kauai Department of Water introduced themselves. Mr. Saiki provided the members with background history of the rule amendment proposal, which began in 2010. Ms. Suzuki and Mr. Doi summarized the amendments by explaining the major changes, which entail the modification of facilities reserve charge, the establishment of time period to install water meters, the modification and establishment of facilities reserve charge offset, and the establishment of grant funds offsets. The businesses that will bear the direct cost as a result of these rule amendments will be land developers that deal with the development of housing.

Modifications of the facilities reserve charge apply to businesses and individuals needing new water meter service on property not previously served by the Water Department; the fee increase is expected to be 300%, from \$4,600 to \$14,115. While the increases for businesses is formulated a little differently, the amount is still significant. The establishment of the time period to install water meters provide guidelines that require developers to install approved water meters within a certain time period. The modification of the facilities reserve charge modifies the percentage of the offset that can be allowed for specific storage or off-site transmission facilities that are constructed by developers to more accurately reflect the proportionate costs of each component of the system.

The proposed establishment of total offsets allows a developer to receive off-set for the entire liability amount per category of source or off-site transmission improvements if applicants construct all of the source or storage or off-site transmission facilities for their development. The establishment of grant funds offsets provides developers the opportunity to pursue grant funds for projects that can be used to offset the projects liability.

In response to a question by Second Vice Chair Bennett regarding how the Department of Water is planning to respond to the testimony submitted to this Board from the Contractor's Association of Kauai, it was stated that a meeting has already been scheduled; also, other meetings will or have been scheduled with the Kauai Board of Realtors, and Mr. Tom Shigemoto at Kukuiula. Ms. Suzuki stated that the infrastructure to be built is only for new customers; therefore, only new customers are subject to cost; however, the incoming revenues must carry the debt expenses.

Chair Borge explained that it would clearly be better to have an "annual increase," especially for a small business because a 300 to 500 percentage increase can essentially put a company out of business. Thus, he noted that it was good that the Department of Water plans to meet and discuss the proposal with the stakeholders such as the realtors, contractors, and developers.

Mr. Nakamoto made a motion to support the proposal to proceed to public hearing and to engage the stakeholders due to the negative impact on the small businesses such as the realtors, contractors and developers. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

F. Discussion and Action on Proposed New Rule, HAR Title 13, Chapter 86.1, "Sea Cucumber Management," promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader, Mr. Ritchie, explained that this proposal represents a management plan to help save sea cucumbers from becoming an endangered species. Messrs. Alton Miyasaka, Acting Administrator, and David Skoda, Marine Law Fellow, from DLNR's Division of Aquatic Resources, discussed the history and purpose of creating the proposed new rules.

In January 2015, DLNR became aware of excessive commercial activity of collecting sea cucumbers in Maui's waters, mostly by one business; (there were also other businesses and non-businesses that collected the sea cucumbers). DLNR responded to this excessive activity by initiating an emergency rule, which ceased the commercial activity. The emergency rule, which went into effect at the end of June, and bypasses the normal rule-making process but will expire at the end of October, resulting in the need to create permanent rules. The new rules are intended to create more long-term regulations to better manage the sea cucumber fishery.

Mr. Miyasaka explained that the proposed permanent rules are divided into three different fishery sectors: commercial consumption fishery, commercial aquarium fishery, and non-commercial fishery. In the commercial consumption fishery, DLNR is proposing that it remains closed so as not to deplete sea cucumbers from Hawaii's water. In the meantime, studies will be performed on producing a sustainable take level.

In the commercial aquarium fishery, DLNR developed a take limit, which was discussed with commercial fishers, who expressed support of the limit. In the non-commercial fishery, DLNR believes the "take" is not significant. The overall numbers are subject to change after input is received at the public hearings. It was noted that sea cucumbers are considered delicacies; Mr. Miyasaka added that there are claims of pharmaceutical purposes for using sea cucumbers as well.

Mr. Ritchie made a motion to support the proposed amendments to proceed to public hearing. Mr. Kasper seconded the motion, and the Board members unanimously agreed.

**V. ADMINISTRATIVE MATTERS**

A. Discussion of Board's On-Going Outreach Efforts, in accordance with Chapter 201M, HRS

Chair Borge encouraged the board members to meet with the agency directors as it is good to know who they are and for the directors to know who the Board is; if he is available, he offered to attend the meetings with the members. He also encouraged the members to meet with their respective legislators as this Board will be looking for a budget appropriation from the upcoming legislative session. Chair Borge has a meeting with Senator Glenn Wakai on Thursday, September 17, 2016, at 2:00 p.m., to discuss the proposed budget, and invited any of the board members to join him.

Chair Borge noted that the Governor's Boards and Commissions Office is putting on a workshop for board and commission members regarding sunshine law, ethics, etc.; there is also a tutorial that can be taken on-line at the Office of Information Practices' website. Ms. Palcovich stated that she is currently working on the Board's e-newsletter, and will continue to work on it.

- VI. NEXT MEETING** – The next meeting is scheduled for Wednesday, October 21, 2015, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.
- VII. ADJOURNMENT** – Mr. Nakamoto made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 3:45 p.m.