

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

January 28, 2004

State Office Tower – 235 South Beretania Street ROOM 1500

**CALL TO ORDER:** Chair Woods called the meeting to order at 11:10 a.m., with a quorum present.

#### MEMBERS PRESENT:

- Lynne Woods
- Al Inoue
- Brian Zinn
- Dorvin Leis
- Robert Speers, Ph.D.
- Phyllis Shea
- Joyce Edwards

#### ABSENT MEMBERS:

- David Rietow
- Denise Walker
- Jeanette Chang
- Edward MacDowell

#### STAFF:

##### DBEDT:

Thomas Smyth  
Dori Palcovich  
Shawn Pelley

##### Office of the Attorney General

John Chang

**GUESTS:** Susan Kern, Staff Attorney, Office of Information Practices (OIP)  
Tim Lyons, Executive Vice President, Hawaii Business League  
Ed Tschupp, Manager and Chief Engineer, Kauai Department of Water  
Scott Matsuura, Manager of Government Affairs, Alexander and Baldwin  
Sandy Pfund, Project Director, Hawaii Community Development Authority (HCDA)  
Steven Miyamoto, Project Engineer, HCDA  
Mark Willman, Owner, Planet Ocean Watersports  
Ed Thompson, Executive Director, HFIA  
Wally Weatherwax, Liquor Administrator, City and County of Honolulu, Liquor Commission  
Anna Hirai, Assistant to the Administrator, City and County of Honolulu, Liquor Commission  
Daniel Arakaka, ASO, City and County of Honolulu, Liquor Commission  
Kirby Shaw, Parking Administrator, Disability and Communication Access Board, Department of Health  
Ron Gallegos, President, RCA Coalition of Care Homes  
Maria Tome, Engineer, Strategic Industries Division, Department of Business, Economic Development and Tourism

#### WORKING LUNCH AS THE MEETING PROGRESSED

- II. INTRODUCTION OF NEW BOARD MEMBER:** Chair Woods welcomed the newest member, Ms. Joyce Edwards, to the Board. "Discussion Leader" assignments will be discussed further at a future board meeting.
- III. APPROVAL OF MINUTES:** Minutes of the December 9, 2004 meeting were approved as presented.
- IV. PUBLIC COMMENTARY:** Public commentary is included with each agenda topic discussed.
- V. OLD BUSINESS:**
- A.** Review and discussion of Kauai Department of Water Proposed Rule changes regarding "Pass through of Private Charges" – Mr. Ed Tschupp, Manager and Chief Engineer, Kauai Department of Water, discussed the proposed "Pass Through of Private Charges" rules. He indicated that the rules impose mostly a positive impact and explained the one-time charge for hook-ups. An inquiry was made about the process involved of buying water. He discussed the process

involved and spoke about the facility reserves charge fee. The Board supports the rules noting that they have already gone to public hearing.

- B. Review and discussion of HAR Chapter 11-219, "Parking for Persons with Disabilities" (DOH) – While the proposed rule changes reflect a positive effect on podiatrists, overall, they do not exhibit material impacts on small business. Dr. Speers indicated that there was no reason to object to the modifications, as they were necessary. The Board unanimously concurred and supported the proposed rules.
- C. Report and update of HAR Chapter 13-38, "Wai'Opae Tidepools Marine Life Conservation District" (DLNR) – Mr. Willman, owner, Planet Ocean Watersports, thanked the Board for supporting his company. Chair Woods spoke with Governor Lingle, who was familiar with Wai'Opae Tidepools rules and encouraged the Board to continue with their support. The Board concluded that the DLNR was not interested in modifying the existing rules. Mr. Zinn recommended that the Board look to the legislature for relief and also for an executive order from the Governor. The Board voted to pursue both an executive order and legislative relief regarding amending the restriction on commercial activity in Wai'Opae Tidepools Marine Life Conservation District.
- D. Review and discussion of post public hearing statement on HAR Chapter 4-29, "Dogs, Cats, and Other Carnivores" (DOA) – It was agreed that any impact on small business would be positive. The Board unanimously supported these rules, which have already had a public hearing for adoption.
- E. Review draft SBRRB Annual Report and 201M-7, HRS "Administrative Rule Review Report" – Members reviewed the two draft reports. Ms. Palcovich reminded them the reports are in draft form and that they are currently in the Governor's Office for review. Therefore, the Reports should not yet be distributed to the public.
- F. Update of Legislative Items – including "Small Business Bill of Rights" – Dr. Speers explained the "Bill of Rights" had both a House version, introduced by Representative Colleen Meyer, and a Senate version, SB 2687, introduced by Senator Baker. All members agreed that lobbying for the bills was of utmost importance. Part of the lobbying efforts includes contacting Bette Tatum, President, NFIB, and Senators Roslyn Baker and Sam Slom along with Rep. Brian Schatz. Mr. Lyons expressed that the "Bill of Rights" was a great project and urged the Board to pursue lobbying to the legislature. The Board unanimously agreed that, upon request, members from the neighbor islands, who want to testify and lobby for the "Bill of Rights," as well as other related small business bills, are approved to fly into Oahu.
- G. Update of presentations to Small Business Groups – Nothing was reported.

## **VI. NEW BUSINESS:**

- A. Presentation of Uniform Information Practices Act by the Office of Information Practices – Ms. Susan Kern, Staff Attorney, OIP, discussed and answered questions regarding the Uniform Information Practices Act. Dr. Speers questioned if OIP receives many calls from small businesses, and inquired about the policy of small businesses providing confidential financial information or records. Ms. Kern informed him that their office receives many calls from small businesses and that the statutes prevent the release of confidential information. She listed the steps required for businesses when requesting information from an agency. Ms. Edwards asked if competitors are allowed to receive financial data on other businesses when it entailed bidding on contracts, to which Ms. Kern replied no. Dr. Speers further spoke of the problems with bidding on contracts and releasing of information.
- B. Review, discussion, and presentation by City and County of Honolulu – Liquor Commission, Proposed Administrative Rule Amendments – Mr. Weatherwax discussed the responsibility of the Small Business Advisory Group, a panel created to review a need for a fee and amount. He discussed the proposed fee increase. He explained the hopes of increasing revenues and the vacancy cutbacks to keep within a 20% margin fill. The increase would take effect in fiscal year 2005 and gave reasoning for the overage. The amount of increase varies by the type of license a

business holds, and explained the process. Mr. Inoue asked about the percentage projected. It was stated that gross sale estimates are projected for the fiscal year. Mr. Weatherwax further spoke of the collection process and the requirement of a business to renew their liquor license each year. In response to whether wages would be affected by the increase, Mr. Weatherwax indicated that the employees are covered by the collective bargaining agreement with the Hawaii Government Employee Association.

Mr. Inoue asked the amount of the current budget and Mr. Arakaka stated three million dollars. Mr. Lyons presented the budget figures for 2001 and 2002. Mr. Zinn stated that he supported an increase as one solution but the amount requested was extreme. Board members agreed and debated whether a flat fee would be better. Mr. Arakaka explained the negative impact on small businesses if a flat fee was implemented. The Board unanimously agreed that the substantial fee increase would undoubtedly impact small business negatively. It was recommended that notice of public hearing be provided to all those companies affected by the proposed increase with the hope that those companies will voice their opinions of the proposed changes.

- C. Review and discussion of HAR post public hearing HAR Chapter 11-100.1, "Adult Residential Care Homes" (DOH) – Mr. Lyons discussed some of the administrative rule amendments and which direction DOH has taken since the public hearing in Kapolei. Mr. Gallegos, President, RCA Coalition of Care Homes, explained the required qualifications. Chair Woods offered to speak with the Director of DOH about the proposed rules and the significant impact on small business. The Board determined that it would like to hear further testimony from the "industry" and voted to form an investigative sub-committee, consisting of Dr. Speers, Mr. Lyons, Mr. Gallegos and Mr. Zinn.
- D. Review and discussion of HAR Chapter 15-20, "Subchapter 10 Improvement District 11" (HCDA)- Mr. Steven Miyamoto, Project Engineer, HCDA, discussed his agency's responsibilities and provided a presentation explaining the Kakaako Project regarding the development and the associated costs. He stated the location of the designated improvement area and the request to obtain additional private property. He gave the allocation of costs and estimated cost improvements. Messrs. Zinn and Inoue questioned the assessment and the cost of the project to the individual owners, to which Mr. Miyamoto indicated that the payments would be collected by monthly installment.

Ms. Pfund, Project Director, HCDA, assured the Board that HCDA surveyed the streets and approached the individual businesses to find possible ways of accommodation during the construction process. The Board discussed and agreed with the assessment and suggested reviewing testimony after the public hearing. Ms. Edwards asked the estimated length of time required for completion of the project and Mr. Miyamoto stated fifteen months. Ms. Woods purported, and the Board concurred that while it is acknowledged that there will be an enormous negative economic impact on the affected businesses, it is recognized that upon completion of the project, it will prove to be an overall positive impact on the individual landowners. In addition, the Board encouraged HCDA to proceed to public hearing, at which time, the Board will be anxious to review the small business testimony.
- E. Review and discussion of HAR Chapter 18-237, "General Excise Tax Law" (DoTax) – Ms. Shea indicated that as the amendments are mainly clarifications to the existing law, the rules should have a positive impact on small business. The Board supports the rules.
- F. Review and discussion of HAR Chapter 1360.5, "Northwestern Hawaiian Islands Marine Refuge" (DLNR) – Mr. Zinn reviewed the amendments and supports the administrative rule with reservations concerning the potential impact on commercial fishing industry fleet and eco-tourism.
- G. Review and discussion of HAR Chapter 17-1705, 17-1736, 17-1737, 17-1739.1, and 17-1740.1, under Subtitle 12, Med-QUEST Division (DHS) – Deferred until the February board meeting.
- H. Review and discussion of HAR Chapter 19-133.2, "Periodic Inspection of Vehicles" (DOT) – Deferred until the February board meeting.

- I. Review and discussion of HAR Chapter 19-133.5, "Suspension or Revocation of an Official Inspection Station or Inspectors Certification" (DOT) – Deferred until the February board meeting.
- J. Review and discussion of draft rules, "Ethanol Content Requirement" (DBEDT) – Mr. Matsuura, Manager of Government Affairs, Alexander and Baldwin, discussed the requirement and blending process of ethanol and the economic advantages. He stated the intention of the rule is that the ethanol be blended at the terminal using the example already in use in California in order to minimize the impact on small business. The Board has determined that there is little impact on small business and supports the proposed rules.

**VII. REPORTS FROM COMMITTEES** – Nothing was reported at this time.

**VIII. REVIEW OF THE FOLLOWING EXISTING ADMINISTRATIVE RULES**

1. HAR Chapter 4-1, "Board of Agriculture – rules of Practice and Procedure" (DOA) – Chair Woods reviewed the proposed amendments and concluded there was no impact on business. The Board unanimously agreed.
2. HAR Chapter 4-8, "Agricultural Loan Program Rules" (DOA) - Chair Woods reviewed the proposed amendments and concluded there was no impact on business. The Board unanimously agreed.
3. HAR Chapter 4-9, "The Aquaculture Loan Program" (DOA) - Chair Woods reviewed the proposed amendments and concluded there was no impact on business. The Board unanimously agreed.

**IX. REPORTS FROM THE CHAIR** – Nothing was reported at this time.

**X. REPORTS AND UPDATES FROM BOARD MEMBERS** - Nothing was reported at this time.

**XI. POLICIES AND PROCEDURES:** Discussion of Policy Manual - Deferred

**XII. ANNOUNCEMENTS:** Correspondence dated January 10, 2004 from Ms. Christine Paul and Mr. Thomas Russi was distributed and reviewed. The Board unanimously decided that the correspondence would not be added to next month's agenda.

**XIII. NEXT MEETING:** Tuesday, February 10, 2004; No. 1 Capitol District Building, room 410.

**XIV. ADJOURNMENT:** Chair Woods adjourned the meeting at 2:50 p.m.