

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

December 16, 2009

Conference Room 410 - No. 1 Capitol Building, Honolulu, HI

I. **CALL TO ORDER:** Vice Chair Au called the meeting to order at 1:31 p.m., with a quorum present.

MEMBERS PRESENT:

- Charles Au
- David De Luz Jr.
- Donald Dymond
- Dorvin Leis
- Sharon L. Pang
- Richard Schnitzler

ABSENT MEMBERS:

- Bruce Bucky
- Lynne Woods
- Peter Yukimura

STAFF:

DBEDT
Dori Palcovich
Milton Kwock

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF NOVEMBER 18, 2009 MINUTES

Mr. De Luz Jr. recommended that the November 18, 2009 minutes be approved with minor corrections, Ms. Pang seconded the motion and the Board members unanimously affirmed the motion to accept the minutes as corrected.

III. OLD BUSINESS

- A. Review and discussion of post public hearing statement of HAR Chapter 11-81, "Smoking in Public Places" (DOH) – Mr. Julian Lipsher, Manager, Tobacco Prevention Education Program, gave brief comments on the history of the law. He commented that the economic impact of the proposed law cannot be objectively made at this time due to the challenging economic times Hawaii is now experiencing. He then introduced Mr. Blair Goto, Deputy Attorney General, who was responsible for reviewing the amendments to HAR 11-81.

Mr. Goto explained that businesses are protected under Chapter 91-9 through 91-15, HRS, which allows business to challenge the department's actions. The law, giving businesses due process and exemptions to applicable rules as it might negatively impact on business, are within the purview of the Legislative Branch of government. Any changes to these laws would have to be taken to the Legislature.

Board members' comments dealt with what they perceived to be inconsistencies in the proposed amendments to the rules and the difficulties that businesses encountered interpreting laws/rules that lack clarity. The Board was worried that the rules exceeded the intent of the law and that there was not a clear plan for enforcement. Mr. Lipsher commented that DOH has powers to enforce and investigate complaints. The department's investigators would have to see the violation take place. Currently the level of compliance is in the 90% range with less than 12 violations per month and it is his opinion that the rules, as drafted, are within the intent of the law.

Mr. Bill Comerford, representing the Hawaii Bar Owners' Association, testified that HAR 11-81-6 requires businesses to post signs notifying the public of the law. His continuing concern was that violations on the businesses' premises impacts business even though the owner has done everything the law/rules require – the responsibility for compliance burdens the business, not the individual smoker who is violating the law. Mr. Lipsher stated that DOH does not/cannot take away permits it does not issue. The only permit DOH issues to bars/food establishments is the sanitation permit. A liquor license does require a

sanitation permit. Mr. Comerford commented that the DOH can remove a businesses' sanitation permit after 3 violations. There is a 60 day waiting period before a business can apply for permit reinstatement and a one year waiting period after license revocation.

Testimony from industry representatives all echo the need for the DOH to reconsider the amendments to HAR 11-81 as it negatively impacts small businesses. Rules need more clarity.

Mr. De Luz Jr. asked Mr. Lipsher what was the department's position based on the testimony from businesses. Mr. Lipsher responded that DOH found businesses' testimony useful as it develops rules based on legislation. He suggested that business go back to the Legislature if it was not happy with the law. He will go back and meet with Mr. Goto to discuss what was heard from the Board and industry.

Mr. De Luz Jr. made a motion to oppose moving the rules forward. In addition, motion strongly recommends that department reassess rules based on testimony and comments from the Board and industry representatives and suggests DOH readdress the Board once changes have been made to the rules. Mr. Schnitzler seconded the motion and the Board members unanimously agreed.

- B. Review and discussion of post public hearing statement of HAR Chapter 3-180, "State Building Code," 3-181, "State Energy Conservation Code," 3-182, "State Electrical Code," 3-183, "State Plumbing Code" (DAGS) – Mr. Kerry Yoneshige, DAGS Deputy Director provided brief comments relating to the proposed changes and noted that the administrative rules being discussed are only applicable to State buildings. He also noted that the State Energy Conservation Code was developed with Hawaii in mind. The administration of rules as it impacts on non-State buildings is administered at the county level.**

Mr. Anthony Borge, Sales Manager at RMH Sales, testified that the rules call for solar heat gain coefficient specifications that would price his company out of the market in the area of glass window жалousies. HAR 3-181 would require a .65 solar heat gain coefficient for жалousie louver window systems. Under the rules as proposed, window manufacturers would have to use tinted or "low-e" glass as opposed to using clear glass. Cost to use tinted or "low-e" glass would increase prices up to four times. His request is for an exclusion for жалousie louver window systems in unconditioned residences. Deputy Director Yoneshige commented that Mr. Borge's testimony was discussed at the State Building Code Council meeting held on December 8th. The Council's chair appointed an investigative committee to look into formulating a simplified template to help the business community.

Mr. Dymond made a motion to defer decision making on HAR 3-181, "State Energy Conservation Code," pending DAGS going back and meeting with their stakeholders and come back to the Board with more thorough response to Mr. Borge's comments. The motion recommended that HAR 3-180, 3-182 and 3-183 proceed through the proper channels for adoption. Mr. De Luz Jr. seconded the motion and the Board members unanimously agreed.

- C. Continuing review and discussion of post public hearing statement of HAR Chapter 13-233 and 234, "Small Boat Harbors," and HAR Chapter 241, "Boating" (DLNR) – The Board did not receive a copy of DLNR/DBOR's audit report and no DBOR staff was present at the meeting. The Board originally requested the audited reports at the November 2009 SBRRB meeting to scrutinize the allocation of revenue and expenditures and to review the auditor's management comments. The Board decided that it could not make a decision on the proposed amendments to HAR 13-233 and 234 without the requested information.**

Mr. De Luz Jr. offered to work with the DBOR administrator to review the allocation and classification of revenue and expenditures.

Mr. De Luz Jr. made a motion to request that DLNR, specifically Mr. Ed Underwood, work with the Board to review DBOR's financial statements and projections. Review will to help clarify the allocation of revenue and expenditures that justify the mooring fee increases. Memo will be drafted to Director Thielen with Mr. De Luz Jr. and Mr. Schnitzler copied. Mr. Schnitzler seconded the motion and the Board unanimously agreed to the motion.

IV. NEW BUSINESS

- A.** Update and discussion of 2010 Legislative Session – At 3:33 pm, Mr. De Luz Jr. requested that the Board go into executive session to consult with the Board's attorney based on HRS 92-5(a)(4). Ms. Palcovich and Mr. Kwock were excused from the meeting while the Board met.

The Board meeting was called back into regular session at 3:52 pm.

Mr. De Luz Jr. made a motion to request that Senator Carol Fukunaga include provisions within her proposed bill to move RegAlert and SBRRB to DCCA. Ms. Pang seconded the motion and the Board voted unanimously to the motion.

V. REPORT FROM CHAIR - None

- VI. REPORT FROM BOARD MEMBERS** – Mr. De Luz Jr. reported that the BLNR met last week and there was a lot of testimony relating to DBOR. The memo to Director Thielen from the Board as discussed in Section III.C. of the agenda will be tool to help DLNR with their Recreational Renaissance Plan B efforts.

VI. ANNOUNCEMENTS – None

- VII. NEXT MEETING** – Wednesday, January 20, 2009, 250 South Hotel Street, Honolulu, HI, Room 410.

- IX. ADJOURNMENT** – The meeting adjourned at 3:55 p.m.